BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD MEETING

TRANSCRIPT
OF
PROCEEDINGS

Thursday, December 8, 2016
Emerson-Junior Senior High School
131 Main Street
Emerson, New Jersey 07630
Commencing at 8:15 p.m.

BOARD MEMBERS PRESENT:
GARY SCHWINDER, CHAIRMAN
EVAN KUTZIN
THOMAS SUDANO
GARY GOURSky
MAYOR LOUIS LAMATINA
DOUG McKENDRY
ROBERT ADAMS
STEVE MALONE

ALSO PRESENT:
Christopher F. Martin, Esq., Board Attorney
Doug Doyle, Esq., Board Redevelopment Counsel
Gary Ascolese, Engineer
Brigette Bogart, Planner
Board Secretary

TRINA B. OTHA
CERTIFIED COURT REPORTER
APPEARANCES:

DeCOTIIS FITZPATRICK & COLE, LLP
By: DOUGLAS F. DOYLE, ESQ.
Glenpointe Centre West
Frank W. Burr Boulevard
Suite 31
Teaneck, New Jersey 07666
Borough Redevelopment Counsel
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MR. SCHWINDER: Good evening, and welcome to the Thursday, December 8, 2016 meeting of the Borough of Emerson Land Use Board. Before we begin with tonight's agenda, we would like to notify the public that one of the items on tonight's agenda is a public hearing. The Board will consider whether or not a certain area meets the statutory criteria under New Jersey Local Redevelopment and Housing Law to continue to be designated as a Condemnation Redevelopment Area.

Please be advised that due to the numerous blocks and lots that comprise the area, the Board will only be reviewing, hearing, and taking into consideration the following block and lots at tonight's meeting. Block 419, Lots 1, 2, 3, 4, 6.01, 6.02, 7, 8, 9, and 10. If your are the property owner and/or person in interest affected by the potential designation of any one of these aforementioned properties, then you are invited to comment before the Board when the opportunity is provided. If you are not a property owner and/or a person of interest that may be affected by designation of a specific area being considered, then you are invited to remain for the hearing, however, please note that any information and/or
testimony relating to any of the other blocks and
lots will not be tonight, but at a future Board
meeting where notice will be provided in the same
manner as required by law notifying all affected
property owners and/or persons of interest, at which
time the Board will consider the other properties.

Also the Land Use Board has been
directed by the Mayor and Council to review certain
additional amendments to the Borough's Redevelopment
Plan. The Land Use Board has already provided its
report recommending certain amendments, and will
only be reviewing two additional amendments tonight.
Specifically, we will consider an amendment
requiring a minimum five-foot setback on the facade
of fourth floor of buildings facing Kinderkermack
Road, and an amendment to the parking requirement
that require the Board to retain a consultant for
certain applications. These are the only amendments
that the Board will review tonight, as the Board has
previously reviewed and recommended other amendments
contained within the proposed ordinance.

The Board will begin hearing a
presentation from Brigette Bogart, the Borough's
planner, as well as any person willing to comment
and aid the Board in its recommendation to the Mayor
and Council. Thank you for your cooperation, and we will now begin the regular agenda of tonight's meeting. And I ask anybody who has a cell phone, please silence it right now so we don't hear any phones going off during the meeting.

The first item on the agenda is the approval of the minutes of November 10th. Everybody should have received a copy of the minutes. At this point in time I will entertain any comments, changes, or corrections from any Board member. Do you have any comments, changes, or correction?

Not hearing any responses, I'd like to entertain a motion to accept the minutes as prepared.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: Minutes are approved.

Correspondence and vouchers?

BOARD SECRETARY: No correspondence; we do have vouchers.

(Vouchers were read, totalling $8,360.58.)

MR. SCHWINDER: I will entertain a motion to approve the vouchers.)

(Motion made and seconded; all in favor.)

MR. SCHWINDER: Vouchers approved.

Next on the agenda is a resolution for
118 Eagle Drive. This is the Kim residence, and the family had applied for a rear yard setback, which we approved at the last meeting. So tonight we will be memorializing that particular approval in the form of a resolution, which everybody should have received by e-mail. If anyone has any comments, changes, or corrections, please state them now.

MR. MARTIN: Mr. Chairman, just for the record that includes 19.1, I believe, percent of impervious surface where 15 is the permitted. And also in the right side of the building, if you're looking directly at the front door from the street, there should be no structures in that eight-foot zone between the property line and the structure. The air conditioning units will have to go over on --

MR. SCHWINDER: The left side --

MR. MARTIN: On that side, it has to be screened and adjacent to the structure and in accordance with Mr. Ascolese's approval. That's the basis of the resolution.

MS. SCHWINDER: Thank you very much.

Any other comments?

MR. GOURSKY: What was determined with the front tree.
MR. SCHWINDER: What was determined with the front tree is, they're going to trim the tree as best as possible as prescribed by the tree expert who also met with the Shade Tree Commission, and hopefully that tree will survive. If it doesn't survive after a number of years, the applicant is required to replace the tree with the same species, and a certain girth, which I don't recall right now.

MR. MARTIN: And they have to follow the requirements of the Shade Tree Commission.

MR. SCHWINDER: That's correct.

Any other comments, questions?

Not hearing any other questions or comments, I'd like to get a vote, a roll call vote on this resolution, please. Can I have a motion?

(Motion made and seconded; all in favor.)

MR. SCHWINDER: Approved.

The next resolution that we have to memorialize is for 23 Pavonia Avenue, the Sabino family, and this was for a rear yard setback application so they could proceed with building a deck. You should all have received a copy of that resolution, and I'd like to entertain any questions, comments, or corrections from the Board.

Not hearing any, questions, comments
or corrections, I'd like to entertain a motion to
approve this resolution.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: So that is approved.

Next we have an application for 437
Old Hook Road, Unit 5, Club Pilates. Is that
applicant here? Please step forward.

(A L I S O N  W A R N E R, was duly sworn.)

MR. MARTIN: For the record -- and
welcome to our normal meeting here. For the record,
just state your full name and address.

MS. WARNER: Alison Warner, business
address, 437 Old Hook Road, Unit 5.

MR. MARTIN: Mr. Chair, if I can lead
it might be more expeditious.

MR. SCHWINDER: Fine.

BY MR. MARTIN:

Q. Ms. Warner, what is your type of
business that you're looking to open up?

A. Pilates franchise, it's a studio,
small fitness studio.

Q. And It would be in the Emerson
ShopRite Shopping Center?

A. Correct.

Q. And you're here because we have to
1. approve the Club Pilates logo, correct?
   A. Yes.
2. Q. My understanding is it's a California company and it has Pilates in numerous states across the country; is that accurate?
   A. Correct.
3. Q. And there's probably about four in New Jersey now?
   A. Yes.
4. Q. And, hopefully, we'll have a good Pilates in Emerson, right?
   A. Yes, you will.
5. Q. The sign or logo, more specifically, which is why you're here, is in each of the franchises across the country?
   A. Correct.
6. Q. And it's a standard Pilates logo, and I believe evidence has been presented to the Board as to what it looks like, and we're going to mark that as A-1 for Applicant 1, okay?
   A. Okay.
7. (Whereupon, A-1 was marked for identification.)
8. Q. Mr. Ascolese is behind you, he's the Board engineer and the Town engineer. He gave us a
little synopsis of what you need to do, and,
Mr. Ascolese, I'm going to just go off of that and
ask her a question, okay?

MR. ASCOLESE: Sure.

Q. Mr. Ascolese would like you to confirm
that you will not illuminate the sign after 11 p.m.
each night, however it's lit up, you're not going to
light it after that.

A. Okay.

Q. In accordance with the ordinance we
commonly call Chapter 232-2 Section H of the Code.
Do you agree to do that?

A. I agree.

MR. MARTIN: The maximum distance the
sign can extend off the building, Mr. Ascolese, I
believe is eight inches?

MR. ASCOLESE: Correct.

MR. MARTIN: I believe that the sign
itself is a thickness of five inches.

MR. ASCOLESE: Correct.

Q. Do you believe that the sign itself,
once mounted, will not go beyond eight inches out
from the building?

A. I believe that's right.

Q. We'll just have to do that, okay?
A. Okay.

Q. I don't think there will be a problem with that. That's what you're going to have to do.

A. Okay.

Q. And then the application is required for the logo, under Chapter 232-2 Section 3, that's why you're here. And finally, the -- the sign is in conformance --

MR. ASCOLESE: Yes.

MR. MARTIN: The signage, shape and size, you know, parameters, diameter, the whole thing, is subject to 232-3, Section F. The maximum size of 24 feet, Mr. Ascolese, that's all been confirmed?

MR. ASCOLESE: The sign is in compliance, yes.

MR. MARTIN: So it comes down to the Board's feeling on the logo, I believe --

MR. ASCOLESE: That is correct.

MR. MARTIN: -- and the fact that the entire sign should not be eight inches beyond the side, correct --

MR. ASCOLESE: Mr. Chairman and Board attorney, this dimension of five inches, according to the code, from the building to the outside can't
be more than eight. So if this is five inches, the
maximum distance is going to be three. All right?

A. Okay.

MR. SCHWINDER: If there is any
question you can have your contractor give
Mr. Ascolese a call, and he'll be happy to go over
the details.

THE WITNESS: Thank you.

MS. SCHWINDER: Everybody should have
received a copy of the logo and how it would look
superimposed on the building. And I'd like to
entertain any comments that the Board might have, or
questions that you might have of the applicant.

MR. GOURSKY: It's illuminated behind
the whole sign, all the letters also, or is it --

A. I believe it's front illuminated, so
it's coming outward, not backward.

MR. SCHWINDER: Backlit.

MS. GOURSKY: Same with the logo, I
guess, a light behind it or --

A. Yeah.

MS. GOURSKY: Okay, great. Thank you.

MR. KUTZIN: I guess we're approving
the logo aspect of it, primarily. It looks like a
flower. Is there a concept to that? What exactly
is it?

A. That's a great question. I think it is a flower. I'm not a hundred percent sure where it derived from, but...

MR. KUTZIN: No special meaning behind it, or anything like that?

A. No.

MR. SCHWINDLER: It wasn't designed by you, it was designed by --

A. All by the home office.

MR. SCHWINDLER: By the home office.

And how many colors? Do you know how many colors?

A. Just black and white.

MR. SCHWINDLER: Black and white.

Any other questions or comments?

I'd like to entertain a motion on this particular application. Having reviewed the logo, and that's really, basically, all we have to -- that's all we're charged with tonight. So I'd like to entertain a motion on this, and this application only. Motion to approve.

(Motion made and seconded.)

MR. SCHWINDLER: So we have a motion on the table. We have a motion on the table, we'd like
to have -- I'd like to accept a motion to open
to the public on this application, and this
application only.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: Okay, we're open to
the public, the application for the Pilates business
that plans to open at the ShopRite shopping center.

Anybody have any comment?

Not seeing anybody standing or raising
their hand, I'd like to entertain a motion to close
to the public on this application.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: We are closed to the
public, and now we can vote on the motion before us.

Roll call, please.

(Roll call; all in favor.)

MR. SCHWINDER: You are approved.

A. Thank you very much.

MR. SCHWINDER: You're very welcome.

At our January 5th meeting, there will be a
resolution memorializing our decision. You do not
have to attend that, but it wise for you at some
point in time to pick up a copy of the memorialized
plan -- of the memorialized resolution.

A. Okay. So I'm not getting that until
after the 5th, after January 5th?

MR. SCHWINDER: Right. But you can
tell your contractor that you received the necessary
approval so he can, basically, start acquiring the
materials and getting stuff ready.

A. Okay.

MR. MARTIN: And get a card from
Mr. Ascolese so the contractor can get ahold of him
and maybe he can get going now, okay?

A. Okay.

MR. MARTIN: W-A-R-N-E-R, and then
A-L-I-S-O-N?

A. Yes, correct.

MR. SCHWINDER: And welcome to
Emerson, and good luck with your business.

MS. WARNER: Thank you very much.

* * *

MR. SCHWINDER: We have the room until
11 o'clock, at which time we have to pack up and get
out so the custodians can clean up and finish their
work in the building. So we will be looking to try
to complete the meeting a short time before that so
we're not here until 11:30.

The next part of the meeting is the
public hearing to consider recommending to the
Borough Council whether or not certain blocks and lots located within the Central Business District meet the statutory criteria to be designated as a Condemnation Redevelopment Area pursuant to the New Jersey Local Redevelopment and Housing Law, and to hear all persons interested in or will be affected by the said designation.

And please remember that tonight we are focusing on the 1.9 acres between Lincoln Boulevard, Kinderkamack Road, Linwood Avenue, and the railroad tracks. That's going to be the focus of our discussion tonight. And the person who will be leading that discussion is Mr. Doug Doyle of the -- he is the Borough Redevelopment attorney from the firm of DeCotiis FitzPatrick & Cole, and I would like to turn the meeting over to Mr. Doyle.

MR. DOYLE: Thank you, Mr. Chairman, members of the Land Use Board, Mr. Mayor, thank you. That's correct. The only thing that we're going to be asking the Land Use Board tonight to consider is Block 419, Lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10.

Now, in order to deal with our COAH obligations, we noticed all of the property owners located within --
MR. SCHWINDER: COAH, please --

MR. DOYLE: COAH is the Council on Affordable Housing.

MR. SCHWINDER: Thank you.

MR. DOYLE: As some of the people in the public may know, the Governing Body is under a duty to provide affordable housing. There is a summary of what's happening, and during a break I'd invite people to come up and get a copy. In addition, the study that was performed by Bridgette Bogart is up here, and you're welcome to get a copy of that as well.

As I indicated, those lots in Block 419 are the only properties that we're going to be discussing tonight. You may have received notice, either through publication by seeing it in the paper, or by certified mail at your home or place of business, wherever you're registered in our tax office. If you're not one of those lots and blocks, you're welcome to stay tonight and certainly listen, hear what has to be said and the continued hearings. If you do not want to stay, you will receive subsequent notice in the identical way you received notice for this evening's meeting. No action will be taken with respect to your property until you
receive notice once again, and you have an opportunity to appear, hear testimony, and have an opportunity to share whatever comments or objections you may have at that time.

With respect to Block 419, Lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10, we hope to conclude our hearing this evening. If we don't, you will not receive any further notice. So you will need to come back at the next Land Use Board meeting, the next regularly scheduled Land Use Board meeting. If you are one of those lots in that lot, you will not receive any other further notice with respect to this hearing.

Now, having said that, I'd like to have your planner sworn at this time.

(Whereupon, B R I G E T T E   B O G A R T, was duly sworn.)

MR. MARTIN: For the record, can you state your name and business address?


MR. MARTIN: And do you want to go over some brief qualifications and --
MR. DOYLE: Sure.

EXAMINATION

BY MR. DOYLE:

Q. How long have you been a planner?

A. Certified planner in the State of New Jersey for 15 years.

MR. SCHWINDER: Can everybody hear her?

UNIDENTIFIED SPEAKERS: No.

MR. DOYLE: No problem --

MR. SCHWINDER: Can you bring the microphone closer? Bring it to the other side of the table.

A. I've been a certified planner in the State of New Jersey since 2001, so 15 years.

BY MR. DOYLE:

Q. Have you been accepted as an expert by this Land Use Board and other boards before?

A. Yes.

Q. Have you prepared redevelopment studies?

A. Yes.

Q. How many times have you done that?

A. At least ten this year.

Q. And in the past, I take it in previous
years you've done the same thing?

A. Correct.

MR. DOYLE: I ask that your planner be accepted as an expert in planning.

MR. MARTIN: Qualified as a professional planner, a certified planner in the State of New Jersey, and an expert for the purposes of this hearing. Thank you.

A. Thank you.

BY MR. DOYLE:

Q. Ms. Bogart, did you prepare a study with respect to the lots and blocks that I identified as Block 419, Lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10?

A. I have.

MR. DOYLE: For the record, I've provided each and every one of the members of the Land Use Board a copy. I'm going to ask that this be marked as LUB, Land Use Board Exhibit 1, if that's acceptable, Mr. Martin.

MR. MARTIN: Yes.

(Whereupon, LUB-1 was marked for identification.)

Q. I show you what I previously marked as LUB Exhibit 1. Do you recognize that?
A. Yes.

Q. Is that the report that you prepared for the Land Use Board this evening?

A. Yes.

Q. And does that relate to Block 419, Lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10?

A. Yes, and it also has some additional information regarding the overall study area.

MR. MARTIN: And just for the record, the date is December 8, 2016.

A. Today's date, yes.

MR. DOYLE: For the record, Mr. Martin, copies of that are available for the public, and is at the front of the auditorium on what appears to be a piano bench.

MR. SCHWINDER: If there are not enough copies tonight is there a place where people can get a copy? Can it be posted on-line.

MR. DOYLE: Yeah, so what I'm suggesting is, the first thing tomorrow morning, I will work with our wonderful Land Use Board secretary and our very efficient municipal clerk to make sure that it's posted on-line and available.

MR. SCHWINDER: Thank you.

BY MR. DOYLE:
Q. What things did you do in preparation to prepare LUB-1?

A. So my first thought, from a planning prospective, is this Board and the public to understand that this exhibit, Exhibit 1 from the Land Use Board, is purely just to identify the properties in need of redevelopment. It is not to identify a redevelopment plan; it is not to suggest a redevelopment design or regulations or a vision for the Central Business District. It is purely to ensure that the Central Business District and the study area has continued to meet the need as an area in need of redevelopment.

With that being said, what I did was walk through the local Redevelopment Housing Law process. I reviewed the Building Department records, I reviewed tax assessment records, I did several site inspections, took photographs, reviewed tax maps, and reviewed master plan documents and zoning ordinances. All of that to ensure that we met the due diligence required by the local Redevelopment Housing Law.

Q. Did you personally walk these properties?

A. A number of times, yes.
Q. And did you record your observations when you did that?
A. Yes.
Q. And is that reflected in LUB-1?
A. Yes.
Q. As to each and every individual property?
A. Yes.
Q. Did you have an opportunity to either inspect them inside or at the rear of the buildings as well?
A. Yes.
Q. And how many times do you recall doing that?
A. At least three.
Q. And do you recall your most recent visit to all of these properties?
A. It was November 14th, November 29th, and then as recently as today, so the last three recent visits.
Q. As a result of your visit today, is there any changes that you would want to make to LUB-1?
A. No. As within the last 10 to 15 years, the development and the existing building
conditions have remained similar.

Q. And they remain similar as of today?

A. Correct.

Q. Are you familiar and have you familiarized yourself with the legal standards or criteria necessary in order to declare an area in need of redevelopment?

A. Yes, I'm very familiar with it.

Q. And can you walk this Land Use Board through what those standards and criteria are under the law?

A. Sure. And they're delineated on page 3 of the report. So if you could look at the report as I'm speaking, it may give you a little more insight into the area.

There are eight conditions that are set forth in the local Redevelopment Housing Law. The study area, you only meet one of those conditions, and not all of those properties has to meet those conditions, just some of them, and I'm going to get into that in a second.

But first I'd like to go through the eight criteria, and then just talk a little bit about the criteria that I utilized in this analysis. So they're identified A through H. The first,
starting with criteria A, and this is important, the
generality of buildings are substandard, unsafe,
unsanitary, dilapidated or obsolescent, or possess
any such characteristics, that are so lacking in
air, light, or space be conducive of unwholesome
living or working conditions. Now, this is
important because I relied on this criteria when
analyzing the subject area. And when I go through
the report, I'll show you lot by lot why I relied on
that criteria.

Criteria B, I did not rely on, but it
identifies the discontinuance of the use of
buildings previously used for commercial
manufacturing, or industrial purposes. So,
basically, vacant buildings. I did not rely on that
criteria going through this analysis.

Criteria C is land owned by a
municipality, county, a local housing authority, a
redevelopment agency or redevelopment entity, or
unimproved vacant land that has remained so for a
period of ten or more years. Now, within the study
area, we do have a borough on a piece of property
and we do have a borough on a right of way, however,
I did not rely on Criteria C either.

The next two, Criteria D and E, I
relied in my analysis -- I wouldn't say heavily, but I think they're very important to the analysis of the area. So first, starting with Criteria D, and I utilized them together, and I'll explain that in second. But Criteria D says, areas with buildings, improvements by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, which is important to what we're looking at tonight, lack of ventilation, light and sanitary facilities, excessive land coverage, which is also important, deleterious or use or obsolete layout, also important to the study area that we're looking at this evening, or a combination of all these factors that are detrimental to the safety, health, morals, and welfare of the community. And I think this is key to the study.

And as I just mentioned, there's a combination of Criteria D and Criteria E that are important to the Borough of Emerson and the study area, specifically Block 419. Criteria E says, a growing lack of proper utilization of the area, and that goes back to faulty arrangement or faulty design criteria, and it's caused by a condition of either the title, the diverse ownership of the real property or conditions therein, which impedes upon
the land assemblage or discourage the undertaking of
improvements, resulting in a stagnant, not fully
productive condition of land potentially useful or
valuable for contributing or serving the public
health, safety, and welfare. And the reason I say
that Criteria E is very important is that when I get
into the report, you'll see that there are a number
of master plan documents and Borough documents from
2003, the minimum, to today that say that the
Central Business District should be developed with
mixed use, should be -- that the heart of the
downtown should have safe pedestrian ways, should be
an economically viable Central Business District.
And from the 2003 documents, 13 years later to
today, none of that has fulfilled itself. So you'll
see through the tax records analysis and the master
plan analysis that Criteria E is met in a number of
different lots.

Criteria F and Criteria G were not
utilized in this analysis, and I'm not sure it's
necessary to go into it, but they're listed on page
3.

Criteria H is important. It talks
about smart growth principles, and this is important
because the study area is surrounded by and centered
by the Borough's train station. And while it is
important to note that, yes, a number of the
properties are developed, some of them have viable
businesses, they are not developed in a means that
are a vision of the master plan, they're not
developed in a means considered by smart growth
principles, and a number of them are required for
the effective redevelopment of the area adjacent to
the train station. So through this analysis I
relied on this criteria as well.

So those are the eight criteria, of
which I relied on for of them for this analysis.
Q. But did you rely on any other analysis
as you were going through these properties?
A. Other than what I just spoke about,
no.

Q. What about land value?
A. The land value analysis that I will
get into in a second falls under Criteria E, which
is under utilization of the lots. I also looked at
police records, building maintenance records,
environmental issues. With regard to DEP mapping,
there are a number of sites that still have ongoing
DEP monitoring. So there are a number of issues
that are involved in this analysis, but that's
strictly going through the eight criteria.

Q. With respect to the eight criteria, can you explain just generally so when we look back the Land Use Board will understand what the table is that you prepared that appears on pages 6, 7, and 8 of LUB-1?

A. Sure. So what I did was, in the first portion of the document, identify the eight criteria. And then starting on page 4, I go into a little more detail of what it requires a municipality to approve that they meet those criteria based on recent case law.

What Mr. Doyle just mentioned starts on page 5 and identifies what is required to meet Criteria E. And what I had mentioned previously is that it should be combined with Criteria D, talking about obsolete layout. So following page 5, I went through an analysis of the tax assessment records for all of the study area. And I had done that previous to identifying that we only want to focus on Block 419. So while all the study area is here, what I'd like to talk about first is, in general, of the 82 properties in the study area as a whole, which are identified on the map to my left --

MR. SCHWINDER: That goes beyond
the --

A. That goes well beyond the Block 419.

Q. Let's identify that as LUB-2.

(Whereupon, LUB-2 was marked for identification.)

A. And that map is in the report.

Q. Can you just indicate what page of the report it's in, please?

A. Page 10.

MR. DOYLE: I dated it 12/8/16,

Mr. Martin.

MR. MARTIN: Thank you.

A. So as I started to mention, a lot of the background information I started to gather before I thought it was appropriate to pull out block by block and section by section of this analysis. So for the next analysis with regard to the tax assessment records, I did for the entire study area, which I would repeat for every hearing that we have on any sections.

But as I mentioned, there are 82 properties in the overall study area. Only ten of those properties have a ratio of land value to improvement value of two to one or greater. And the reason that's important is because there's plenty of
standards that suggest that if you have something less, then the property may be under utilized.

MR. SCHWINZER: Could you just explain the ratio so everybody understands what you're talking about? Please.

A. Sure. So if your land value, in simple terms, is $100,000, and your improvements are $200,000, that's a two to one ratio. If you have something less than that, so your improvements were less than two to one, it is an indicator that you're improperly or under utilizing your property. And I say it's an indicator because there's other factors involved. And there's other factors such as site design, site layout, building conditions, and whatnot. And that's why I had previously said that Criteria D in the Local Redevelopment Housing Law should be combined with criteria E. You have to look at the site layout, the building conditions and how that works, and why the site may be under utilized. So you combine that with analysis of the tax records.

So as I indicated, the overall study area, only ten properties meet that ratio or see that ratio. So it's only twelve percent of 34 acres of the entire municipality. If you're specifically
looking at Block 419, of the 11 lots only one of them meets that criteria at a 2.48 ratio, and that's Lot 4. The remainder of lots --

MR. SCHWINDER: Can you identify that lot?

A. Lot 4 is the corner lot.

MR. SCHWINDER: Do you know what business is on that lot?

A. It's the restaurant, Ranchero Cantina.

Do you want to mark this?

Q. Yes, I'm going to mark this as LUB-2A.

(Whereupon, LUB-2A was marked for identification.)

MR. MARTIN: Just for the record, just identify that.

MR. DOYLE: Yes. I'm dating it 12/8/16.

Q. Would you indicate what LUB-2A is, please?

A. Yes, it's a focus map of the study area identifying the block and lots, and then on the right-hand side of the exhibit is the study area outlined in red overlaid on the existing zoning map. And the reason I bring this up is because what I want to do is, actually, go to the next page which
is a focus of Block 419.

Q. We're going to indicate that as LUB-2B?

(Whereupon, LUB-2B was marked for identification.)

Q. And would you indicate what LUB-2B is?

A. Sure. So on the right-hand side of the exhibit is the entire study area, and as I had mentioned previously, what we decided to do after looking at all the analysis and the planning issues with regard to the study area is divided up, and we took Block 419, Section A, and that's identified in blue on the left, and then we divided the remainder of the study area, different sections, based upon access issues, location issues, existing uses and whatnot, so that's on the left-hand side.

On the right-hand side is what we're focusing on tonight, Block 419. It has the aerial view taken from Bing maps. Block 419 as well as the GIS map, and it will show you that -- what I just mentioned, Lot 4 is Ranchero Cantina on the corner of Lincoln and Kinderkamack Road, and that is the only lot that exceeds the tax assessment ratio of two to one.

Q. In addition to the under utilization
analysis that you performed, did you also
consider --

A. One other thing I did want to mention
about the ratio analysis is, has shown that just to
do the analysis of improved value to land value is
not enough. You have to look at it compared to the
rest of the municipality. If those ratios are
similar throughout the municipality, it doesn't mean
anything. So what I did was look at other
commercial areas and all other commercial properties
within the municipality and through the same
analysis. So all other commercial properties that
are not in the study area, their ratio is 2.1 to
one. So they are similar or exceed the two to one
ratio. So there is something going on within the
study area that is not necessarily characteristic of
other commercial properties within the municipality.

Q. In addition to the analysis with
respect to potential under utilization, did you also
consider other analyses, like police records?

A. As I started to mention, I looked at
the police records, and I looked at them for all of
Kinderkamack Road, and this was done prior to
pulling out Block 419. But if you look at the
entire study area, which is 34 acres of land in a
municipality that is about 1,535 acres, that translates into 2.2 percent of your land area is within our study area. Of that 2.2 percent, it equates to 32 percent of all police calls. Now, granted, it's noteworthy that, yes, it's a highly travelled commercial area in town, I expect the police calls to be slightly higher in this area than elsewhere in town. But 32 percent of the police calls for the -- as opposed to the rest of municipality seems slightly high. And the least noteworthy, as this Board reviewed, the analysis for redevelopment -- and that's located on page 12. What I did was, I summarized the actual the police calls, but the actual police reports are in the appendix of this document.

MR. GOURSKY: And how many years --

A. The last five years.

Q. Did you also consider the master plan?

A. Yes, and I think -- as I started to mention to you, obviously, from a planning prospective, I think this is the one of the most important things in this document, is the master plan for numerous years, over a decade or so, starting in 1999, have identified a need to upgrade the area, and this is all detailed on page 13. It
1999 it says that there's need for a downtown plan
2 to address areas adjacent to the railroad station,
3 and it goes on to say that the Borough should
4 consider use of the Local Redevelopment Housing Law
5 to create a redevelopment plan, and it has a number
6 of goals. From that, it appears that the Borough in
7 2002 created a CBD plan.

MR. SCHWINDER: CBD meaning Central

Business District?

A. Central Business District. And I

think that's noteworthy because any time you look up
12 Emerson, Google Maps, it used to be Yahoo Maps, Bing
13 Maps, you type in Emerson, it pulls you to Block
14 419. That's the central area of your downtown.
That's your Central Business District.

So in 2003, the Central Business

District plan was created and had a number of goals.
It said, create a comprehensive and coordinated long
range plan. Create -- something that would create a
continuous frontage of buildings, encourage lot
consolidation, reduce setback lines, enhance
opportunities for in fill and redevelopment where
appropriate, support modest increase and intensity
of use, identify regulations that would encourage
rehab. And that was 13 years ago. And it also
talks about road improvements, facade improvements, and whatnot. From that, a year later the Borough decided to do a redevelopment designation in 2004, which was the first redevelopment designation, and in 2006 created a redevelopment plan.

So all that being said, nothing happened. We had two lots of the entire area redeveloped. In 2007 --

MR. SCHWINDER: What you're saying is, we gave individual land owners the opportunity to redevelop their property or get together with neighboring land owners and possibly create something better than what was there already.

A. Not at first. At first we required the lot consolidation. But you're correct, in 2008 when we looked at this, we said, if an individual property owner can redevelop their own property based upon these enhanced standards, increase density, if you can meet all these criteria, you're more than welcome to do that. One property owner did that.

Q. Since 2008?

A. Yes. Actually since 2003 -- so in 2007, the examination report repeated the goals of the Central Business District. And the reason I'm
emphasizing this is, I think it's very important that this Board has continually over the decade said, these are the goals. This is what we want to happen, and nothing has happened. In 2007, goal number one was to uphold the comprehensive long range plan for the Central Business District, to improve the buildings' storefronts, to create active storefronts. Goal two was to encourage the coordination of building renovations construction of new building. Goal three was to seek a unified design character through a system of street scape improvements. Goal four, to improve, increase pedestrian safety, and enhance aesthetics. Goal five, again, enhance aesthetic by encouraging general maintenance of all buildings. These goals still hold true today. And again, it goes on to page 14. And this is over a decade of planning documents, and we've only had one property redevelop in accordance with the plan, and then one individual property owner actually develop his property solely.

So those are pages 13 and 14 of the document. And then I get into the zoning ordinance, which, basically, just describes the fact that we relaxed over zoning criteria, we relaxed the
permitted uses, we have permitted more uses, we
reduced the setback to try to encourage further and
further development, and nothing has happened.

Q. Now, did you go through a property by
property, lot by lot analysis?
A. Yes.

Q. And does that begin, I guess, on page
18 of the study?
A. Yes.

Q. I'd like to direct your attention to
page 19 where I believe you did an analysis of Block
419, Lot 1; is that correct?
A. Yes. And if I may, I want to pull up
another exhibit.

Q. Great.

MR. DOYLE: I'm going to mark this --
Mr. Martin, are we at 3?

MR. MARTIN: Yes.

MR. DOYLE: LUB-3, 12/8/16.
(Whereupon, LUB-3 was marked for
identification.)

BY MR. DOYLE:

Q. Ms. Bogart, would you explain what
LUB-3 is?
A. All those photographs and maps were
taken from the report itself or photographs that I took on the site inspection of November 14. The next three exhibits you'll see are all the details and photographs of the lots on Block 419. The first exhibit you'll see here, are Lots 1, 2, and Lots 3 and 4.

Q. And would you please explain to the Board what your observations were with respect to Block 419, Lot 1.

A. Just for the Board's and public's edification, the way this works is, you're going to start at 11 o'clock and go clockwise around Block 419. So Lot 1 is located on Lincoln Boulevard. It's the northwestern most lot adjacent to Kenneth Avenue. This lot is currently occupied by a two-story residence. You'll see in the photographs on the exhibit, which I have all the way to the left as well as in the report on page 20, the structure is in dire need of rehabilitation or renovations, identifies that it is substandard and unsafe. There are holes, not only located within the siding, but also in the roof itself. The roof is caving in. The roof along the porch area is concave, as well as the -- the roof flooring itself. There is no parking on-site, and there's very little room for
storage. And you can see that there's deteriorating windows as well as gutters that are exhibiting water damage, the gutters are falling down. So from all of that, and you can see the photographs yourself, I thought that it was important to note all this, and the structure is in a state of disrepair, and that it falls under Criteria A.

Not only that, I believe that Lot 1 qualifies for faulty arrangement under Criteria D. The only resident located on the block is adjacent to the railroad. There's no parking on the site. A couple of times I've been there, there have been trucks parked within the small grass area, which may not be in and of itself inappropriate, however it's located immediately adjacent to Kenneth Avenue, which is a busy area commuter area, so to have trucks pull off a grass area may be inappropriate and may impact negatively the surrounding area. The facts that there is no on-site parking and it appears to be more than a two-family, also impacts the area because there's only two-hour parking on Lincoln Avenue as it is. In addition, I think that this lots means Criteria E, talking about under utilization. So that Criteria E goes in concert with Criteria D. This property has land to
improvement ratio .86. As I mentioned to you, 2.0 is the standard. So I think this property in and of itself exhibits characteristics that meets Criteria A, D, and E, and this can be confirmed through site inspection and the photographs that are identified on page 20 of the report and the exhibit to my left.

MR. SCHWINDER: My observation of that particular property, there's a vehicle that parks on the grass next to Kenneth Avenue. There is a fenced-in area behind the house, which a car could certainly park, however, it is occupied by a flatbed trailer.

A. And other materials, which I'm not sure what they are.

MR. DOYLE: Mr. Chairman, I truly appreciate that comment, and I know Mr. Martin with counsel you, but nothing prevents this Lands Use Board from making its own personal observations. While Brigette and I are professionals and we prayer these reports and we give you advise, most of us don't live in your community. We, actually, happen to live in the same community several towns away. I would urge you to rely on your own observations since 2004, and as we go through this hearing process, I think it's important that you make those
observations, and when you vote on whether you believe this meets the criteria, I'm going to ask all the Land Use Board members to share whatever personal observations they believe are in forming their decision. And I know, Mr. Martin, you can advise them appropriately at that time, so I really appreciate that. And I would ask that all of the Land Use Board members, if a decision is made tonight that you would understand that, perhaps, between now and the time we return, you can make your own observations. You can walk the site. So, thank you, Chairman.

BY MR. DOYLE:

Q. You also indicated in your report that, not withstanding the fact that you believe in your professional opinion that it meets Criteria A, D, and E, that it also may be necessary for the effective development of the redevelopment area in its entirety. Can you explain a little bit about what that means?

A. Sure. What I think is important to Lot 1 in this location is that we have a Borough right of way, Kenneth Avenue, that could access or potentially access a redevelopment plan for the public. It can access public parking, it could
access parking for property located at Kinderkamack Road. The fact that you have a lot immediately adjacent to Kenneth that is under utilized and deteriorating is important to note, because I think that lot could be important to the access issues and the redevelopment issues of the overall plan for Block 419.

Q. Thank you. I'd like to turn your attention now to page 21, and specifically Block 419, Lot 2. Did you similarly, as you indicated, make an inspection of that property?

A. Yes, I did.

Q. Can you walk the Board through that inspection? And I'm assuming they should also make reference to LUB-3.

A. Yes. So Lot 2, the photographs and the aerial and the tax records are on page 21 and 22 of the report, and also a portion of them are located in the central portion of the exhibit to my left. This lot, obviously, is, as the Board is aware and I'm sure some of the public is aware, was previously occupied by a one-story residence, also without parking and was dilapidated. It was previously, in 2011, had a number of building maintenance violations, and has since been torn
down. And I believe it has been purchased by the
owners of Lots 3 and 4 for parking.

Lot 22 exhibits the existing
conditions. You'll see, basically, an empty lot,
not improved, there's no parking lot, it's a gravel,
dirt, a little bit of hay. It looks like dumpster
area that's halfway enclosed, I believe, for the
adjacent restaurant, and clearly under utilized.
It's been vacant now for a number of years. The
improvement value is .045, again, where the standard
is 2.0. Obviously, again, significantly
underutilized, particularly with regard to the fact
that it is in the heart of the Central Business
District, and in the heart of your planning goals
and vision goals for the last 12 years.

Q. You said that it may be used for
parking. In your research did you reveal that it
became the subject of a site plan that permits
parking there?

A. I have not seen that, but there are a
number of tire tracks that illustrate that people
have been parking there.

Q. Right. But there's nothing on file
that suggests that this received site plan approval
to have parking, correct?
A. Not that I've seen.
Q. And in this area is parking a principally permitted use?
A. No.
Q. And is there any striping in this area?
A. No.
Q. So in conclusion, you believe that this meets Criteria E, correct?
A. Yes, and that, obviously, can be confirmed through the site inspections, the photographs above, and, obviously, the Board can provide their own input as to what they've seen, but I believe that it meets the criteria not only for the underutilization, but it's also, I believe, stagnant at this point, because it's been a number of years where it sat like this. And you have to take that into consideration with other land use and planning goals for this area as a whole, the Central Business District, which I just went through.

MR. SCHWINDER: Prior to that becoming an empty lot, it was a dilapidated house and used many years to store goods from the adjacent restaurant. So it wasn't utilized as a residence, so that particular piece of property has been under
utilized for at least 15 years.

Q. In addition, it's your opinion that this property may also be necessary for the effective development of the entire area. Can you give us your impression as to why it's a good property based on its location or other factors --

MR. MARTIN: Mr. Doyle, all opinions are to a reasonable degree of certainty in the field of --

MR. DOYLE: Professional planning, thank you.

MR. MARTIN: -- for the rest of the hearing?

MR. DOYLE: Yes. Thank you.

A. I'm not trying to testify as anything else other than planner.

MR. MARTIN: So a reasonable degree of certainty in the area of professional planning.

A. The same comments I made with regard to Lot 1 pertain to Lot 2, immediately adjacent to the right of way of Kenneth Avenue. And you'll notice if you look at the tax maps, both Lot 1 and Lot 2 line up directly to Lot 7 which is also owned by the Borough. What's important to note for this whole area, Lot 7 is owned by the Borough, commuter
parking lot, Ambulance Corps building, which I'll
get into in a second, but without that lot and these
two lots, it's very difficult to redevelop the block
as a whole. So the lots located in front of
Kinderkamack Road are only approximately a hundred
feet deep. So if you try to put a substantial
building there and add parking and landscaping and
sidewalk improvements requested by the Borough, it's
very difficult to do it within a hundred foot depth.
So not only is the Borough property needed to do
that, but also these two adjacent properties of
Lots 1, 2, and three.

BY MR. DOYLE:

Q.     I'd like to now direct your attention
to Block 419, Lots 3 and 4. I trust you conducted a
similar analysis?
A.     Yes.
Q.     And can you walk through the analysis
you performed for the Land Use Board? Beginning on
page 23.
A.     Yes, on the right of the exhibit to my
the left. This is the restaurant and the one
property that actually meets the ration of more than
two to one. You'll see that lot three is utilized
for parking. The lot itself has been subject to a
number of violations dating back at least to 2006, Health Department issues, illegal parking, selling of vehicles, signage, lighting issues, littering, weeds -- in 2010 it was boarded up property. Obviously, it's been purchased and redeveloped since then, however, the site still, unfortunately, has issues with regard to site layout. There's no landscoping on site, there's no pedestrian walkways. It's a hundred percent impervious coverage. And even given the fact that it's a hundred percent impervious coverage, it only has approximately 46 parking spaces. And the reason I note that is because it severely under parked. Your ordinance requires one parking space for every three feet. So if you translate 46 parking spaces for every three feet, you can have a restaurant that's 138 seats. The existing restaurant is well upward of 220 or 230 seats. So it's significantly deficient at least by 30 or 40 spaces on site.

And the reason I raise this is, while a majority of time the site is empty. During breakfast and lunch, there's very little parking there. But there are some times where parking is needed on the site, and this translates to impact of the surrounding area. People need to find a place
to park elsewhere. So that is the negative impact on the surrounding area. As well as the fact that it is an empty parking lot in the middle of your downtown 90 percent of the time, that also has a negative impact on your Central Business District. SO while it is a viable use and important to have a restaurant there, wonderful that it's been redeveloped as a building, unfortunately, the way the site was laid out, it seems to not be working with your redevelopment goals and plans and your existing zoning ordinance.

Q. What does the existing ordinance call for on this particular lot?
A. Mixed use, three to four stories.
Q. And what does mixed use mean?
A. It would be commercial below and residential above. So a greater utilization of the property, obviously providing it with adjacent properties, providing it with if appropriate parking, but, again, while the Borough would like to encourage restaurants, it's important that the building has been redeveloped, it does not -- it doesn't seem to fit in with the zoning ordinance and the plans itself.

Q. And for this reason you believe it
meets Criteria D?

A. Yes.

Q. You also indicated it could potentially be necessary for the effective development of the area?

A. Yes.

Q. And could you indicate why, please?

A. Sure.

Q. Within a reasonable degree of planning certainty.

A. With regard to Block 419, there are two corner properties that are very important to the redevelopment. The first corner property is to the south, immediately adjacent to the train station. And as you're coming into the town and you're crossing over the railroad tracks, that's the one property you're going to see that is going to have a major impact.

The other property you're going to see on Block 419 is this site. When you're coming from south down Kinderkamack Road, this is the point of property that's going to have a visual impact and a planning impact on the Kinderkermack Road Redevelopment Project. So from that prospective, these two corner properties, I believe, are very
important for a very effective redevelopment plan, particularly given the fact that if you look at the way and compare it to the way the existing development is set up. The last thing you want to do is go through a redevelopment project and have the corner property, the most visual piece of the redevelopment project, be a service parking lot that's empty 90 percent of the time. So from a planning perspective, I think this is important to provide for effective redevelopment of this area.

Q. I'd like to now direct your attention to Block 419, Lot 5. Did you have an opportunity to perform an analysis of Block 419, Lot 5?

A. I did.

MR. DOYLE: I'm going to mark a new exhibit, and that's going to be LUB-4, 12/8/16.

(Whereupon, LUB-4 was marked for identification.)

A. It's Lot 5 and 6.01 and 6.02.

Q. Can you please explain to the Board what observations you made of Block 419, Lot 5?

A. Sure. As this Board is, I'm sure, aware, and the public is aware, this site was previously an abandoned one-story structure in severely deteriorated condition. It had
contaminations on site. It is still an active NJMES site, it's with the DEP is 452277. It has groundwater contamination that's being monitored. The reports and maps from the New Jersey DEP is located in the appendix of the document. Previous to it being redeveloped, there were numerous violations that are all detailed with regard to maintenance issues. All of that has subsequently been taken care of. The individual property owner, and this is the one property that I had mentioned previously that's been redeveloped, the property owner took advantage of the codes that we wrote to ensure or try to encourage redevelopment, and then subsequently redeveloped the property. The building itself is consistent with redevelopment plan. The one concern from a planning perspective here is that in order to properly connect this property with the adjacent lots it is necessary for redevelopment or to include in the redevelopment plan some way to coordinate and encourage combined circulation. One of the things that is --

MR. SCHWINDER: Combined vehicular circulation.

A. Yes, and, actually, pedestrian as well. One of the benefits to redevelopment is that
you can coordinate the design from site to site, and you can't do that on an individual basis. And obviously, you see that here, that individual came in for site plan approval, and he came by himself. What is great from a redevelopment perspective is that you can coordinate parking, vehicle circulation, pedestrian circulation, and an encourage cross access so that it works more efficiently not only for this site, but also for the area. So while the site itself has been redeveloped, I think that it meets -- it's necessary for the effective redevelopment of the area just from a circulation perspective at a minimum.

Q. When you say it's necessary, where the building sits may not be necessary, but the lot, the parking lot may be necessary or is necessary for the effective development of the entire area?

A. I believe it is.

Q. Directing your attention to Block 419, Lot 6.01, I'm assuming that that also is referenced in LUB-4?

MR. SCHWINDER: May I just go back to that one redeveloped property? There are how many apartments in that property?

A. Three -- I was up there twice -- I
think it was three.

MR. SCHWINDER: Three apartments that were rented well before the building was finished.

A. Yes.

MAYOR LAMATINA: Two.

MR. SCHWINDER: Two apartments. So they were rented prior to completion.

A. Yes.

MR. SCHWINDER: So it was desirable for people to be in that area.

MR. DOYLE: So I think your point, Mr. Chairman, is well taken. The mixed use goals are immediately fulfilling themselves as soon as we built it. And if you adopt, you build it and they will come, as soon as it was -- to your point, before it was finished, with a mixed use building, which our planner has recommended for years now, it immediately got occupied. And by the way, just for the record, we were talking about Block 419, Lot 5.

BY MR. DOYLE:

Q. Turning our attention to Block 419, Lot 6.01, similarly that can be found on LUB-4, can you please explain to the Board what your observations were about Lot 6.01?

A. So the pictures and narrative on page
27 to 29 of the report, obviously everyone is aware that this is the one-story structure with the liquor store and the cleaners. The site is not undersized for the zone, however, the existing building is so substantial that it creates an issue with regard to parking on site, circulation on site, and it appears to create a need for outdoor storage. You'll see from the pictures, you have --

Q. Page 28?

A. Page 28, a number of items that could be stored inside but are on the exterior, creating further issues for circulation and parking. There's a Budweiser trailer or cooler that been there, I think, on every site inspection that I've taken, and it was still there this evening. You have a number pallets that I believe are recycling material but are standing out in the parking area, a cooler, ice machine, and whatnot, that are located on the exterior of the building which is also substantial, creating further impediment to circulation.

Q. Can you indicate where the rear of this building faces?

A. The rear of the building faces the railroad tracks.

Q. So anybody pulling into town or taking
public transportation looking out their window passing through Emerson would see this?

A. Right. So on page 28, all except for the photograph on the upper left-hand side, is all the rear of the building.

Q. And did you make a final determination as to whether this meets the criteria in the redevelopment law?

A. Sure. Before I do that, what I do want to note is that there have been environmental issues on the site. It's still an active NJMES site identified as 12270. Again, the report and map is in the back. It has been subject to past code violations for property maintenance, and identified on page 27.

Here, the other thing important to note is that pulling into the site from Kinderkermack Road, you basically have 33 feet from, I would say, curb line, but asphalt line to the front of the building where you pull in. That gives you 13 feet to pull out, and then you're backing into where pedestrians would walk with undefined sidewalk. And I say that from a planning perspective, that it's important to realize, because pedestrians can be walking on an asphalt area and a
car pulling out in that same exact area, and all your master plan documents have identified that this area is unsafe for pedestrians, and it's a goal to improve pedestrian safety. And this is one of the sites where pedestrian safety could be an issue based upon the dimensions of that front parking area.

So based on all those facts, I believe that it meets Criteria D and E, both obsolete layout, because of the size of the building, it's partially layout, and E because of underutilization. The site land to improvement value is 1.23, again, versus 2.0 is the standard. And as I mentioned to you previously, the commercial properties outside the study area has a ratio of 2.11.

So I concluded from a planning perspective that the area, this lot in particular, is not developing in a manner that furthers the goals of the master plan, and it's not consistent with the goals of the Central Business District plan, particular because it's very close to the train station. This should be your smart growth area. This should be the areas being developed with mixed use and more intense development of affordable
housing, more in line with your master plan goals, and that's not what's happening here.

Q. When you talk about pedestrian safety, are you also talking about what's referred to as walkable downtowns?

A. Yes.

Q. And in your in opinion as a planner, does this site plan encourage or discourage a walkable downtown area?

A. It's clearly discourages it, and that's clearly noted in a number of the master plan documents. You have vehicles that have to pull out back into where pedestrians would possibly walk in an area where there's no defined curb cut, I think it's -- what's approximately 55 to 56, 57 feet wide without a curb cut. So a pedestrian to walk by and figure out where it's safe to walk is a little discouraging, to say the least.

Q. You also indicated that you believe that this property is also necessary for the effective redevelopment of the entire area. Can you show the Board why you believe this property is also important to the effective redevelopment of the area?

A. Sure. As I started to mention, given
its proximity to the train station, I think, and the master plan goals and the CBD goals, the fact that this is developed, a one-story building that doesn't have appropriate parking seems to be completely opposite of what the Borough has been trying to achieve for the last 10 to 15 years.

MAYOR LAMATINA: I have a question.

Paragraph one on page 29, the last sentence, the lack of a curb cut is a typical -- is that a typo?

A. Yes, that's supposed to be is not typical.

Q. Turning your attention to page 30, Block 419, Lot 6.02, can that also be found on LUB-4?

A. Yes, it's the column all the way to the right.

Q. And what is lot 6.02, and what did you observe, please?

A. So the structure on 6.02 is a mixed use structure. From what I found there are five residential units above, or within the structure as a whole, and then there's a small retail component which is currently vacant --

MR. SCHWINDER: Occupied as of today.

A. Okay. As of yesterday.
Q. When you say occupied as of today --

MR. SCHWINDER: There is a business in there operating. So lights were on, people were inside, something to do with eyebrows and threading, or something like that.

A. So page 31 provides the photographs -- similar photographs that are on the exhibit. It's a two-story structure, ground floor commercial, five residential units above, on site parking. It appears that there's eight parking spaces for the retail and the five residential units, so it's slightly under parked. I don't think that appears to be such an issue, but the parking lot itself is an issue. It's half gravel, half dirt -- excuse me, half dirt, half asphalt, you'll see weeds growing through the asphalt, there's a light pole in the middle of the lot impeding circulation. There's a guardrail that is falling down, a deteriorating facade that has holes in the siding, as seen in the photographs. There's boarded up windows, they're all covered, including the front windows, there's deteriorating paint, and, basically, the facade itself has been falling apart. So you'll see in the photographs all boarded up windows and the paint that is falling down. And while in and of
itself it may not be an issue, but that does not seem to be the stricture that you want to mimic the goals or promote the goals of your Central Business District in your redevelopment plan.

So I would -- as the Board, as you're reviewing this report and analyses, I would look at the pictures very carefully, and look at the goals that are identified in your master plan and make sure that's what you don't want to see here. From a planning perspective, I'm pretty sure that's not what is consistent with the master plan goals.

Q. And again, is this property particularly well positioned such that it would be necessary for the effective development of the Central Business District in this area?

A. Yes. This property is three lots away from the train station. It is immediately adjacent to where the train stops. It is, basically, a part of the Central Business District, and that's why I mentioned the Central Business District goals. I believe this meets Criteria D for deterioration based upon all the issues I mentioned previously, also Criteria E, underutilization. It has the land to improvement value of .78, and, again, 2.0 is the standard. And based upon the goals of this
municipality, I don't believe that this is the most proper utilization of this lot, so...

Q. Did you mean Criteria A and Criteria E?

A. Yes.

Q. I'd like to direct your attention now to Block 419, Lot 7. This is Borough owned. We didn't put this on the board. We're assuming the Land Use Board is likely familiar with this.

MR. MARTIN: For the record, it's page 32, if anyone has it.

Q. Thank you. Can you explain what your observations were with respect to Block 419, Lot 7?

A. Sure. What I actually did do -- and let me go through the observations first.

Q. Sure.

A. So this site is occupied by the volunteer Ambulance Corps, and the commuter parking area. It has a land to improvement ratio of .27, clearly under utilizing service parking, and I believe it meets Criteria E.

This property itself is substantially necessary for the effective redevelopment of the area. And I want to -- I printed out an aerial from Google maps.
Q. This is going to be LUB-5, 12/8/16.

(Whereupon, LUB-5 was marked for identification.)

Q. Should we turn it?

A. I'll do this for you, and then for them. So to the left of the exhibit is Kenneth Avenue, straight along the western side of the redevelopment area or Block 419. This area in the middle is Lot 7. This is the Ambulance Corps building, and this is the commuter parking area. So the Borough owns this strip here and this portion in the center. The lots that front on Kinderkamack Road, this area, are approximately a hundred feet wide. And as I started to mention earlier, in order to develop them with the sidewalk, the improvements, the dining that is envisioned by the Central Business District plan, and provide for the parking, there's no way that could happen from in a lot depth of a hundred feet, from here back. So in order to accomplish the commuter parking, the shared parking, the wider sidewalk, the landscaping, all the goals envisioned in the master plan and the CBD plan, you need this lot. Without this lot and the Borough right of way, it will never happen. So this lot, Lots 1, 2, and 3 are extremely necessary for the
effective redevelopment of this area. Without this section, it can never happen, because the design doesn't work. So from those perspectives, not only under utilized, but they are necessary for the effective redevelopment of the area.

MR. DOYLE: Could you just, basically, point out what you were identifying?

A. As I mentioned, this is Kenneth Avenue which is the public right of way. Lot 7 which is owned by the Borough is here. It's the big chunk in the middle. It's occupied by the Ambulance Corps and the commuter parking area. The lots that front of Kinderkamack Road basically run this way. And they're generally a hundred feet in depth. So as I just started to mention, in order to accommodate all of the improvements that the master plan documents are looking for, that could never happen within a hundred feet in depth.

So this area, Lot 7 that's owned by the Borough, Kenneth Avenue, Lots 1, 2, and 3, are really necessary in order to see any improvements that can happen on Kinderkamack Road. So what I'm saying is, Lot 7, which is Borough owned, not only is it under utilized, but it's necessary for the effective redevelopment of the area as a whole.
MR. DOYLE: Mr. Chairman, we have three more lots to go through. Would you like us to continue going through --

MR. SCHWINDER: Yes, please.

MR. DOYLE: At this time we're going to turn to page 34 of LUB-1, and I'm going to mark the board that has just been put up by our planner as LUB-6. Do I have that right, Mr. Martin?

MR. MARTIN: Yes.

(Whereupon, LUB-6 was marked for identification.)

BY MR. DOYLE:

Q. Directing your attention to page 34 of the report, and specifically Lot 8, did you similarly do an inspection and make observations of this block and lot?

A. Yes.

Q. Could you walk through those observations with the Board, please?

A. Sure. So the last board includes Lots 8, 9, and 10 which are the three lots that are in the corner, the southern most corner of Block 419, and immediately adjacent to the train station. There are a very similar because they have very little parking up front. The majority of what
happens on-site appears to happen to the rear. The front of the building appears to be in okay condition or appropriate condition, and seems to be maintained. It appears from site inspections that it's a different story when you look to the rear of the lot. Starting with Lot 8, it's a one-story multi-tenant commercial building. Up front there is, again, no curb cut, very uncontrolled, and we go back to pedestrian safety. There were a number of violations from 2007 to 2015 that are all noted on page 34. No environmental issues on Lot 8. If you look at page 35 are the photographs for the rear of the property. And again, you'll see outdoor storage, a number of benches, ad hoc sheds, I guess storage sheds that have been added on to the building, storage containers with plywood that are toward the rear of the property. You'll see on the left-hand side of page 35 there's a storage shed that is falling down, and behind that is a truck. Between the storage shed and the property line is approximately 27 feet. That drive aisle between the truck and the shed itself is approximately 12 feet. The reason I note that is because it's the only way to get in and out to access the rear of Lots 9 and 10 and a portion of Lot 8. So if you go back there
with a car and all those parking spaces are full,
the only thing you can do is back out of that area,
and that's because that's the way the lot is set up
and designed. You'll see a number of the walls are
crumbling, and I'm not sure the pictures do it
justice, but there's holes in the concrete wall and
cement block, there's holes in the plywood and a
number of the temporary storage structures.

MR. SCHWINDER: Ms. Bogart, this
building has how many retail store fronts?
A. Three.

MR. SCHWINDER: How many parking
spaces?
A. That's difficult to say.

MR. SCHWINDER: Two, three?
A. There are probable four up front.

MR. SCHWINDER: Four parking spaces.
And people who go to these businesses, they pull
their car in forward, and then they're obligated.
To back out onto Kinderkamack Road;
is that correct?
A. Yes.

MR. SCHWINDER: And if they do back
out, they're backing out to a blind sided area,
because the building next door, basically, gets
pretty close to the curb. So you're take your life in your hands as you're backing up with traffic traveling south on Kinderkamack Road? Correct me if I'm wrong.

A. That's right. There's actually two separate circulation issues with regard to this site. One up front as you described, and then one in the rear as I tried to describe, which I assume employees park in the rear. But they're doubling up and trying to back out. It's difficult to get in and out.

Q. Is the rear striped at all, or is there any specific parking area, or is it make shift parking --

A. It appears to be make shift.

MR. SCHWINDER: I would say, given testimony to the ability of a business to thrive, there has been a Chinese take-out restaurant that's run out of that site for quite some time, and it seems to be quite a viable business despite all of these problems. And what I'm trying to say is, that our downtown has opportunity for growth and to attract people to a business year after year after year after year after year if it's the right business.

A. Take out would potentially do very
well. There's no on-site parking needed. It's just
the drivers going in and out, which I could see in
this situation.

Unfortunately, you'll see in some of
the photographs on this site, there's coolers up
there which appears to indicate that the buildings
themselves are not large enough to accommodate all
the necessary equipment for restaurants themselves,
and that's more evidence in Lot 9.

Q. With respect to Lot 8, would you just
briefly confirm what the criteria are --

A. Sure. I believe that Lot 8 meets
Criteria A. The building is dilapidated. It's
evidenced by crumbling concrete. There's holes in
the walls, there's damage to the gutters, there's
plywood that's, basically, so watered through that
it's coming off the building. It appears that the
building really hasn't been properly maintained,
particularly in the rear. The front seems to be
okay.

Additionally, in the rear there's the
parking area, the sidewalks in the front have not
been maintained. They have a negative impact to the
public. So I think that Criteria A has been met. I
believe that Criteria D has also been met for all of
the reasons that you have discussed, Mr. Chairman, and I've discussed those faulty arrangements, undefined curb cuts, undefined circulation areas and parking areas, improper drive aisles, which all have a negative impact not only to the public, to the pedestrian safety, but also to the adjacent property owners. To try to back out a car to adjacent lots is not fair to adjacent property owners. So I think Criteria D is met. Again, I think also Criteria E is met. And as I mentioned in the very beginning, Criteria E and D are very closely related. And you'll see that for most of these properties, they're very similar. The issues that -- the faulty arrangement and faulty design go to the part of why the sites are under utilized. In this case, the land to improvement value ratio is 1.5, which is higher than the other ones but not at that 2.0 standard.

MR. SCHWINDER: In my comments I was talking about when someone is backing out vehicle to vehicle, the possibility of collision, not even thinking at that moment of people walking along Kinderkamack Road, and the driver not being able to see them because they would be hidden by that brick building next door, so that is a severe safety
1 hazard for pedestrians.
2 A. I agree. And overall, obviously, the
3 site is not -- the area is not developed in a manner
4 that is consistent with the land use goals, which
5 is, again, why I went through painstaking detail of
6 the master plan goals and CBD goals in the last ten
7 years.
8 So Lot 8 exhibits the conditions, I
9 believe, that meet Criteria A, D, and E, and I
10 believe it's been confirmed through the site
11 inspection and photographs and the notes, and,
12 hopefully, through your own inspections and notes.
13 BY MR. DOYLE:
14 Q. You also said something that I think
15 is important for the Board to focus on, that the --
16 MR. SCHWINDER: Speak up.
17 Q. I'm sorry -- that the buildings, as a
18 result of their deterioration, create a negative
19 impact on the area. Can you expound on that a
20 little bit, how that creates a negative impact in
21 your experience as a planner?
22 A. I think it goes with anything, even
23 with a residential single-family home, if your
24 neighbor is improving their property or keeping
25 their property up, you want to do the same. If your
neighbor is not doing that, you really don't care
what your property looks like. So it has a negative
impact. The theory of fixing broken windows, you
fix a broken window on one property, the next
property wants to include the broken window. And
that's --

Q.      An accepted planning criteria?
A.      Yes.

Q.      Directing your attention now to page
37, Block 419, Lot 9.
A.      Sure. We're down to two more.

Q.      And similar to be found on LUB-6.
A.      It's in the middle of the exhibit
board.

Q.      And you've made observations of this
as well?
A.      So this is a one-story multi-tenant
commercial building. Again, like all of Block 419,
excessive coverage, on-site parking, wide curb cuts,
stacked parking. This site has had environmental
issues and is still an active site, NJMES site
12778 with ground water termination. Again, the
reports and maps are in the appendix. It had
repeated violations, the Building Department and
property maintenance that are identified on page 37.
Q. You took the photos as well that we find on page 38?

A. Yes. This site seems to have creeping effect as far growing additions. If you look at aerials through -- the last couple of years, first you'll see, if you look on page 38, the addition in the brown next to the coolers, that was there several years ago, and then all of a sudden the adjacent addition, the plywood, showed up a couple years ago. So the photograph all the way to the upper left was taken from the rear of the property. The photograph to the bottom right was taken, basically, looking from the train station forward. This was, again, another site that has a restaurant in it, a number of coolers. And if you look into the temporary structure that was created, there's coolers and the restaurant storage materials that are there. Obviously, the site may be too small for what is being conducted there, the business that's being conducted there. Maybe the building needs to be slightly larger, however, there's very little parking on site.

From the front you'll see the photograph to the left, the bottom, the site does not look -- it looks maintained. But when you look
to the rear, there seems to be other issues going on. As I mentioned to you, the site seems to be undersized for the business that was taking place there.

MAYOR LAMATINA: Do you know if permits were obtained for those additions to that?

A. I don't.

MAYOR LAMATINA: Do you know if this Board granted any permission on variances or any kind of approval for those conditions?

MR. SCHWINDER: As far as I know, no.

Q. And this specific criteria that you believe this site meets under the Local Housing and Redevelopment law?

A. I believe it meets Criteria A, which is deterioration. If you go out there and actually inspect, I don't think the photographs do it justice. But those additions are crumbling, they're clearly not up to code, they are water damaged and falling apart, there's holes in the wall that you can see. Even though the front facade has been patched, you'll see that there are issues with the structure itself. And obviously, you'll see from the photographs and site inspections, that the property has not been maintained up to standards.
Also, the parking area itself has not been maintained. The sidewalk and all the public viewing areas adjacent to the train station in the heart of the downtown has not been maintained. I have photographs of a white pole that's, basically, half out of the ground that's been sitting there for years. It's rusted. So from those perspectives, I believe that the site meets Criteria A. It also meets Criteria D for improper layout, undefined curb cuts, not enough parking. You'll see -- and I don't even know if they have access from the rear, Lot 8, but there's really not enough parking on the site for what the current use is. I believe Criteria D is met.

Also, I believe Criteria E is met. This site has a land to improvement value of .48, again, an indicator of under utilization. So I believe that under utilization, improper land use, deteriorated building, all gives this Board the right to recommend that this site in this area is blighted in accordance with the Local Redevelopment Housing Law.

Q. How about the location of this property with respect to being necessary for redevelopment in the area?
A. Well, this is one of the key properties. As I mentioned previously, Block 419 has two key corner properties. This is the key corner. It is immediately adjacent to the train station. It's where all your road improvements are happening. This is the property that when people come into Emerson, this is what they're going to see. This is the key element to your redevelopment plan, this is the key element to your Central Business District Plan, and all your master plan goals that have been going on since 1999.

Q. And finally, directing your attention to Block 419, Lot 10, which can also be found on LUB-7, did you get a chance to make observations of Block 419, Lot 10?

A. Yes, and this is the last one. This is an undersized site. There's really not too much to say about it, other than it's necessary for the redevelopment plan. It's, again, immediately adjacent to the train station. You can see that in the aerial. The fence that is located in the photograph on page 40, I believe is on the adjacent lot, but it's very difficult to tell. Unfortunately, all the parking for the site is located in the rear, and once you drive back there
again, it's all full, there's nothing you can do.

There's nowhere to park to access any of the stores on the site. I'm not sure that the building is deteriorated. It doesn't seem to be as deteriorated as the rest of the buildings adjacent to it, but the site clearly exhibits faulty arrangement. Trying to get back to the parking area is very difficult, and, I believe, probably only utilized for employees.

Inefficient layout and given the size of the building, there's clearly a need for outdoor storage, and you'll see that as you look at the photographs in the rear. Again, this also meets Criteria E, for under utilization.6.5 or two is standard.

And I keep bringing everything back to Criteria D, faulty arrangement, improper site design, and that clearly leads to under utilization and the lack of economic efficiency in the downtown. I think that when this Board looks at this document as a whole, they need to view that in comparison to your master plan goals.

MAYOR LAMATINA: Paragraph one, the sentence says, lack of a curb cut --

A. I did it again.

MAYOR LAMATINA: Is not typical?
A. Is not typical.

MR. MARTIN: LUB-6 -- we didn't get a 7; am I right?

MR. DOYLE: LUB-6, my apologies.

BY MR DOYLE:

Q. So you believe this satisfies, this specific property of Block 419, Lot 10 meets boats Criteria D and E?

A. Yes.

Q. Is there anything special about the location of this property with respect to the area in general that would indicate that it's necessary for the effective development of the area?

A. Well, as I mentioned, it's immediately adjacent to the train station, so I think it's an important corner. But it also may be important with regard to circulation. Because it's immediately adjacent to the railroad right of way. And the plan, apparently, calls for parking in the rear of the block, and if there's access to rear parking that might be -- so yes, both in location perspective and plan perspective, I think it's important.

Q. I'd now like to direct your attention to the conclusion that you came to in your report.
You've gone through each of the lots in Block 419, and you've come to the conclusion that based on your professional opinion, within a reasonable degree of certainty, each and every one of these lots, for the reasons that you've articulated, meet the criteria to be designated as properties in the area in need of redevelopment; is that accurate?

A. Yes.

Q. And do you have an opinion with respect to the area in general, whether it meets the criteria under the Local Housing and Redevelopment Law?

A. If you'd just indulge me for two minutes, I'd like to just read to you some of my decision. I believe that the properties have a deleterious impact on the surrounding area and the properties as a whole. First of all, I believe the majority of faulty arrangement that is characteristic of Criteria D, which I went through in detail. Due to the size of the sites themselves, the size of the buildings themselves, the location of the buildings, the lack of parking, improper circulation which impacts not only pedestrian circulation, but also vehicle circulation, and it has a safety impact.
There's a number of sites that have inefficient layout which create no opportunities for improvement. There's no way, if you look at the aerial, to improve these properties without doing redevelopment, without consolidating the properties. And that's important to note when you're looking at a redevelopment plan. You can't improve these properties singularly. You can't have them come in for a site plan application, and everything will be fixed. That's not what's going to happen here, because the majority of the properties are at capacity. They need to be done if they want to be improved. If the Borough wants to improve them, they need to be done through the redevelopment process. And the fact that they currently lack appropriate planning standards for circulation, pedestrian circulation, building design is important to note. So if any of that wants to be improved, it has to be done through the redevelopment process.

As I mentioned to you, a lot of them currently lack curbing along Kinderkamack Road, which creates safety issues. Unchanneled vehicles exiting and entering the site creating pedestrian hazards. So for all of those reasons, I believe the majority of the study area meet Criteria D. As I
mentioned to you, I think the majority of the study area meets Criteria E. As a whole, as I mentioned to you, if you're looking at the entire 34 acres, only 10 of the 82 properties meet the 2.0 standard. Only one of the properties in Block 419 meet that standard. If you look at the commercial properties within the Borough outside of the study area, they meet that standard. They're at 2.11. So there's -- as I mentioned to you, there's clearly an issue here. And I believe it's related to the fact that there is poor design and arrangement in this area as a whole. And that has resulted in economic underutilization, which wouldn't be a terrible thing, but it's right in the middle of your downtown, right in your Central Business District where your master plan documents have focused on for years. So combined with the master plan goals, the underutilization, and the obsolete layout, all give rise to this Board looking at this as an area in need redevelopment. And I think you have an important area to consider as an area in need of redevelopment.

Q. As the Borough's planner, do you have a recommendation for the Land Use Board?

A. I believe that the Board should
recommend this area as an area in need of
redevelopment, or a continued area in need of
redevelopment. Because, remember, this was done in
2006 and 2008. We're just reconfirming it here
based on today's standards, and I think you should
recommend it as a continued area in need of
redevelopment to the Governing Body so that they can
move forward with whatever plan is necessary.

MR. DOYLE: That's all we have,
Mr. Chairman.

MR. SCHWINDER: I'm again going to
read what I read earlier on in the meeting, which is
what this Board is charged with. And then we will
open it up for public comments. Let me read what
we're charged with first.

This public hearing is to consider
recommending to the Borough council whether or not
certain blocks and lots located within the Central
Business District meet the statutory criteria to be
designated as a Condemnation Redevelopment Area
pursuant to the New Jersey Local Redevelopment and
Housing Law, and to hear all persons interested in
or would be affected by said designation. And with
that in mind, let me remind you that we have to be
out of here by 11 o'clock.
Our next order of business is public comment. Members of the public are welcome to speak on any topic by coming -- on this particular topic, the area that we discussed tonight, which is the area between Kinderkamack Road, Lincoln Boulevard, Linwood and the railroad tracks.

Come up to the front of room, state your name and address for the record. In the interest of time, speakers are limited to five minutes, including questions and answers. In consideration of all who may wish to speak, please keep your comments brief and concise. May I have a motion to open the meeting to the general comments form the public?

(Motion made and seconded.)

MR. DOYLE: Might I suggest that, perhaps, in order of priority, although everybody should be given an opportunity to speak, but those property owners that are directly affected by this. In other words, those within Block 419, you give them priority since they came here tonight --

MR. SCHWINDER: Absolutely.

MR. DOYLE: And then anybody else, of course, can speak. Does that make sense?

MR. SCHWINDER: That makes sense.
MR. MARTIN: Mr. Doyle, I think that makes sense. There's one other priority --

MR. DOYLE: Sure.

MR. MARTIN: Potentially, I see some dignitaries here. If they have objectors, maybe they should step forward first.

MR. DOYLE: I agree with that.

MR. JAWORSKI: Thank you, Mr. Martin. First I have to apologize to the Board for my informal appearance tonight. I did not intend to step up to the microphone, but I just have a couple of questions I'd like to ask Ms. Bogart.

For the record, my name is Jim Jaworski. I'm an attorney at law in State of New Jersey. I am here on behalf of 214 Kinderkamack, LLC, the owner of Block 419, Lot 4. And I really just had a few questions to supplement the record, if I could.

MS. BOGART: Sure.

MR. JAWORSKI: You talked about what you did in preparation for your testimony here this evening. You mentioned that you went to all of the sites, and you specifically talked to the issue of the Ranchero restaurant. Did you have occasion to go inside and see the interior improvements that
were made to the restaurant?

MS. BOGART: Yes, I have.

MR. JAWORSKI: You did. And did you also see the exterior improvements that were made as well?

MS. BOGART: Yes.

MR. JAWORSKI: You talked about the taxes and the fact that the two to one ratio was met only by one property in the entire study area, that being this property?

MS. BOGART: Yes.

MR. JAWORSKI: And the standard you found around the town was about 2.11?

MS. BOGART: Yes.

MR. JAWORSKI: What was the standard you called off for this property in question?

MS. BOGART: 2.48.

MR. JAWORSKI: And the standard you mentioned around the town was 2.11?

MS. BOGART: Correct.

MR. JAWORSKI: Were you aware that there was an increase in the assessment for the improvements only in 2015 of about $220,000?

MS. BOGART: No.

MR. JAWORSKI: Are you aware how long
the restaurant has been operating?

MS. BOGART: I know a couple of years.

MR. JAWORSKI: Couple years? You also put, I believe, four photographs of the site in question in your report. You spoke, however, about about the visual impact of this site as being one of the few most important, this one with respect to traffic proceeding southbound on Kinderkamack Road, I believe.

MS. BOGART: Correct.

MR. JAWORSKI: Correct me if I'm wrong, but isn't this building located at the back setback lines on both the front and the side yard line?

MS. BOGART: That has nothing to do with -- with regard to my comment with visual impact.

MR. JAWORSKI: I thought your comment was with respect to the empty parking lot that would be used by people driving southbound on Kinderkamack?

MS. BOGART: But also the under utilization. The plan calls for a multi-story mixed use building in this location.

MR. JAWORSKI: And you would see
exactly what as you're driving southbound on Kinderkamack?

MS. BOGART: With regard to the plan?

MR. JAWORSKI: With regard to the refinished exterior of the Ranchero restaurant.

MS. BOGART: Currently?

MR. JAWORSKI: Currently.

MS. BOGART: A restaurant building with an empty parking lot behind.

MR. JAWORSKI: Okay. I believe you mentioned that the restaurant was a viable operation and important to the community. And did you look into how much the building permit fees were at the time that the restaurant was approved?

MS. BOGART: No, I did not.

MR. JAWORSKI: Thank you very much.

MR. DOYLE: Thank you.

MR. SCHWINDER: Would anyone else like to come up? State your name and address.

MS. AGNELLO: My name is Debbie Agnello, and my property is 188 Kinderkamack Road, and I have a few questions to ask. My building houses Cork and Keg and Ranch Cleaners.

MR. DOYLE: Can we identify the lot and block for the benefit of --
MS. AGNELLO: 419, 6.01.

MR. DOYLE: Thank you.

MS. AGNELLO: It's spent a long time memorizing that.

Was the redevelopment area that's referred to in the notice found already to be blighted?

MR. DOYLE: Yes.

MS. AGNELLO: So you're not going through the process now determine if the redevelopment area is blighted?

MR. DOYLE: We're reconfirming that the area continues to meet the blight standard under the Redevelopment Law.

MS. AGNELLO: So what has changed since that time?

MR. DOYLE: I'm not sure I understand the question.

MS. AGNELLO: Well, it was previously determined to be blighted, correct? So why are you reopening this right now? So what's changed since 2004, 2003, since this started.

MR. DOYLE: It was my recommendation to both the Mayor and Council and to this Board that based on the age of this study, that if anybody were
to challenge the designation, because it was so old, a court might entertain sending us back to restudy it. So in excess of caution, we thought it only appropriate and fair to the property owners to restudy the area. Does that answer your question?

MS. AGNELLO: It is does. Thank you.

Has the municipality found that my property in the proposed redevelopment area is not productive?

MR. DOYLE: The municipality previously determined that your property met the criteria to be designated a property in need of redevelopment.

MS. AGNELLO: Is it unproductive? Is my property unproductive?

MR. DOYLE: Currently your property is under utilized, and I'll allow you to speak to that, unproductive in the sense that it's under utilized.

MS. BOGART: From a redevelopment prospective, unproductive is not a term -- under utilized is the term.

MS. AGNELLO: So it's under utilized because of the size of the property and what's there, even though we have parking spots on that property -- so that's under utilized by having
parking on the property? What makes my property under utilized?

MS. BOGART: I did not say that. What I did say, your site itself has a number of issues with regard to parking as you compare it to current standards, and the building is larger, which creates these issues with regard to the current standards for parking and circulation, so that's number one. So it doesn't meet current planning standards --

MS. AGNELLO: Current planning standards.

MS. BOGART: Correct.

MS. AGNELLO: So have you interviewed any of the business owners that are in the redevelopment plan on how productive their properties are? Have you interviewed any of the property owners at all? Have you gone to meet with them or talk with them about their properties?

MS. BOGART: Again, unproductive is not a term under Local Redevelopment Law --

MS. AGNELLO: Then maybe I need to rephrase that. Have you spoken to any of the property owners that are in redevelopment?

MS. BOGART: No.

MS. AGNELLO: None.
MS. BOGART: No, I'm sorry, I take that back, I've spoken to one.

MS. AGNELLO: Okay, just one.

And the buildings that are in this redevelopment, have they all paid their taxes?

MS. BOGART: That, I don't know.

MS. AGNELLO: The notice states that property owners have 45 days to challenge. Does this mean we have 45 days to challenge the determination of the area you have designated to be in need of redevelopment?

MR. DOYLE: Once the area is reconfirmed, you have 45 days from the time the Mayor and Council adopt that recommendation by the Land Use Board, assuming the Land Use Board accepts and adopts the recommendation of their planner.

MS. AGNELLO: That might be on December 20th Town Council meeting?

MR. DOYLE: I don't know whether we're going to reach that, but, yes, I would urge anybody here to carefully monitor what the -- first, of course, what this Land Use Board may or may not do with respect to this recommendation, and that assuming that they recommend that this area continue to be designated as an area in need of
redevelopment, I would recommend that you monitor what the Mayor and Council do, because if they adopt a resolution reconfirming this as an area in need of redevelopment, there would be a time frame, which is 45 days under the law, from which you would need to challenge that reconfirmation.

MS. AGNELLO: So it's when they vote it. So it's 45 days from then, that's when the challenge period would start.

MR. DOYLE: Yes.

MS. AGNELLO: And have you considered the impact on the property owners by your having them under this threat of redevelopment for about 13 or 14 years? Have you just considered the impact of maybe not being able to get tenants if the tenants moved out, or maybe thinking about selling their property with this redevelopment hanging over their head for all of these years? Who's going to finance that? What bank is going to come and say, oh, gee, they're in redevelopment. Who's going to finance this? So have you even considered the impact on the property owners? So is it your intent to push this area into being in need of redevelopment? Or, in other words, have purposely kept the property owners under the threat of redevelopment so that
there would be a disincentive over course of 13 years for anyone to buy or even improve their property?

MR. DOYLE: So historically and factually, in 2004 the Governing Body determined that this area, including your property and those other properties in Block 419 met the criteria under Local Housing and Redevelopment Law to be designated an area of redevelopment.


MR. DOYLE: In 2008 it was studied again --

MS. AGNELLO: Again.

MR. DOYLE: -- and this Land Use Board reconfirmed that, in fact, the area met the criteria. However, at that time the plan was amended, as Ms. Bogart testified, that allowed and incentivized the property owners to take it upon themselves to redevelop their own area. So without arguing with you, because that's not what I want to do, we encouraged the property owners to take it upon themselves to redevelop their own areas. And we gave them an incentive at that time by saying, you don't just have to have a liquor store or a Chinese restaurant. You can actually go up two to
three stories, you can have mixed use in the
downtown area, and we encouraged that. After eight
or nine years waiting as a result of that
encouragement, no further redevelopment or
improvements to the area had taken place. So now
what our study shows is, not only has nothing
happened since 2004, not only has nothing happened
after we -- after the Governing Body provided an
incentive for property owners to redevelop their
areas, nothing has happened, and it continues to be
blighted, and it continues to deteriorate. And the
concern that we have not only for all of the
taxpayers in Emerson, but the business people down
there as well who want to continue to thrive, is
that it continues to deteriorate, we're going to
continue to have vacancies and further deterioration
of downtown.

MS. AGNELLO: My building has not been
vacant in 50 years. My building has always had
tenants in that building, and it's a thriving
business.

MR. DOYLE: And the concern that the
Governing Body would have for you is that it always
continues to be that way. And if the area isn't
redeveloped, it's only a matter of time, based on
good planning experience and the expert testimony of
our planner this evening, while that might have
happened for the last 50 years, based on our
knowledge -- the planner's knowledge about planning,
that may not always be the case. And that's the
reason why the Governing Body has recommended the
Land Use Board go through this analysis, and that's
why we're before the Land Use Board tonight to say,
look, we want to make sure that you continue to
thrive, and the businesses down there continue to
thrive.

MS. AGNELLO: Thank you very much.

MR. SCHWINDER: Would anybody else
like to make a statement or comment or question?

Yes, sir. State your name and
address, please.

MR. VANDERKUEGEL: Ernest
Vanderkuegel (ph), and I'm from Rockland County and
New Jersey.

MR. MARTIN: And what's your address.

MR. VANDERKUEGEL: Rockland County,
New York.

MR. MARTIN: I appreciate that.

What's the street address? What town?

MR. VANDERKUEGEL: 32. I'm in
Congers, New York.

MR. MARTIN: 32 --

MR. VANDERKUEGEL: Rockland County, Congers, New York.

MR. MARTIN: No, no --

MR. VANDERKUEGEL: Are you an attorney.

MR. MARTIN: Yes.

MR. VANDERKUEGEL: Then that will suffice for you, sir.

MR. MARTIN: For the record, I just need the address for your commentary because we're making a record,

MR. VANDERKUEGEL: Yes. I'm from Rockland County, my name is Ernest Vanderkuegel (ph), and I'm in Congers, New York, and that will suffice.

MR. MARTIN: What address?

MR. VANDERKUEGEL: I just told you, Rockland County.

MR. MARTIN: What street address?

MR. VANDERKUEGEL: I'm not from this town. I don't have to give you my address.

MR. MARTIN: Okay. I'm going to submit to the Board that we not consider any weight
of this man's comments.

Go ahead.

MR. VANDERKUEGEL: I'm sorry, what did you say before go ahead.

MR. MARTIN: Continue.

MR. VANDERKUEGEL: As far as I know, there's three lawyers in this room right now, and they're going to need to have their State IDs. I am a federal officer and I own several businesses. And I have been retained by taxpayers here in this room who are also federal officers and bondholders to protect their rights.

So, yesterday, to your clerk, and I don't know if she's here, Ms. Jane was very helpful, and we faxed her the letter from the Department of Justice that each and every public officer in this town will be requested to read, initial each page, and return to our group, and that will be returned to the Department of Justice. And that, basically, says that this town may or may not be in compliance with their bonds. Every public officer here has to be oathed and bonded and have their State ID cards with them at all times, or they're not in this office. Lawyers have to be bonded as well, so I hope you're all covered. Here's why, sir. Under
USC Title 18 Section 241-242, whoever under any color of any law willfully subjects any person to the deprivation of any rights protected by the Constitution or laws of the United States shall be fined or imprisoned not more than one year, or both.

It has been brought to our attention, and that is the taxpayers, and the group is called OBOT, Oath and Bond Observation Team, and that's who we are, and what we're here to do. So what we're stating right away, immediately, is, these taxpayers are stakeholders. They run this town with their tax dollars, and we're looking to find out who instituted this project, because this project will not go through. What we're going to do is begin at the beginning and make sure that every public officer that is in their office lawfully and properly have their oath and their bonds in place, because you do not make decisions for the stakeholders. And that's under federal law, and we also have the town law, and that was faxed again yesterday to the very helpful Ms. Jane. We faxed her 14 pages. And in that, again, was the Department of Justice letter warning local and state courts that this type of behavior is not going to be tolerated, and that was also in the Bergen Record.
I believe it's the Bergen Record newspaper. And that went federal and it was also on television, and that was last May, so I hope you saw that. Because the very first paragraph of that letter stated, or the article stated, there were serious real life consequences for violation of public office. And we are here to find out which public officers are in violation, and who presented this project that would take advantage of these taxpayers' rights. And I'm heading up that group, and we have several other federal officers, and we reserve the right to bring federal authorities to this town and take care of the business for these taxpayers.

So I would just like to say to you, we will be back, and we request that information within 30 days, that you all read that Department of Justice letter, that you sign and initial each page and return that back, we will be here to pick that up. We will be here at further meetings. We're simply here to make sure that the law is followed.

We are bond observers, and we seek bonds. That's what we do. Because that's what we put you in your office, Oath Bond Observation Team. That's what we do. Right now, we've been alerted that these taxpayers' rights have been violated, and
we're not going to stand for that. I appreciate
your time, thank you very much. And please make
sure all of your paperwork is in order, and you
present that. You must prove compliance, and you
must show proof of compliance upon demand, and this
is that demand, and we request that be fulfilled.
Thank you very much, and good night.

MR. MARTIN: Mr. Doyle, have you
properly presented notice of these hearings to the
Board?

MR. DOYLE: Yes.

MR. MARTIN: Thank you.

MR. SCHWINDER: Anybody else in the
audience would like to make a statement or comment?
Seeing no more hands -- yes.

MS. CORDERO: Good evening. My name
is Rosella Cordero. I live at 11 Chestnut Street.
My property is the one -- I think that it's in the
border. It's not pertaining to the 419 section;
however, it's in the development area. I would like
to know what's the criteria, because my neighbor is
not going to be included in the development area,
and how long do I have -- I mean, how long do we
have to make a decision if we sell the property,
or not, or -- what are we to do?
MR. DOYLE: Can you give us a sense of where you are?

A. Yes.

MR. CORDERO: My name is Eduardo. I'm Rosella's husband. I believe we're referring to Section 3.02.

MR. DOYLE: .02?

MR. CORDERO: Yes.

MR. DOYLE: Do you have a copy of the notice?

MS. CORDERO: Not with me --

MR. DOYLE: But you got it in the mail?

MS. CORDERO: Yes.

MR. DOYLE: May I, Mr. Chairman?

MR. SCHWINDER: Yes, please. Bring the mic closer.

MR. DOYLE: No problem, sure. I was asked about -- what's your name again?

MS. CORDERO: Rosella.

MR. DOYLE: I was asked about Ms. Rosella's property. She's located at Block 214, and it appears to be Lot 3.02, or what she's identifying is 3.02. As I indicated at the beginning of the meeting, we, at this time, are not
providing any testimony or moving forward at this moment with the reconfirmation of your property. If we choose to do that in the future, you will receive similar notice in the mail, and we will publish it in the same way we're required as a matter of law. So right now, we're not asking this Land Use Board to take any action, any further action, with respect to your property. Whatever action may have been taken in the past, and I can tell you that your property was previously designated as property that met the criteria to be designated as an area in need of redevelopment, that continues to remain. That doesn't change. But we are not taking any further action with respect to your property, and if the Governing Body directs us to do that, you will get another notice to appear here before this Land Use Board again.

MS. CORDERO: I do understand, and that is great; that is fantastic. However, I have two little kids. I don't want to move out of Emerson. We bought the house three years ago. We bought from a lady that was there 40 years, I believe, it was a single-family house. I don't know what's the criteria of you to considering that or not, however, I need to know if I need to start
looking for another property or what am I going to do. It's not that simple. I know that it has been years that you have that in process, but at least we -- I mean, we're not a business. We're a family, a normal family that works, and we need, like, a time frame to make arrangements if the COAH is going to redevelop and we need to be relocated.

MR. DOYLE: I don't see that taking place, although I would be happy -- we didn't get a chance to see exactly what the property is, but I would be happy to take your information and work with our planner to figure out where that fits into the overall scheme, and then, not taking up the public's time, communicate with you where I believe this stands. I'm happy to do that. But, certainly, we're not taking it up tonight. It doesn't appear to be on my radar screen nor the planner's radar screen, so I'd be happy to investigate that and follow up for her.

MR. SCHWINDER: Will you give Mr. Doyle your name and address, and he will get back to you.

Is there anyone else?

MR. HOFFMAN: For the record, Kenneth Hoffman, 61 Emwood Drive. My question is for Ms.
Bogart. Approximately how many times have you done reports like this in order to determine criteria for an area in need of redevelopment?

MS. BOGART: Over my lifetime?

MR. HOFFMAN: Yes, approximately.

MS. BOGART: 20, maybe.

MR. HOFFMAN: Is there ever -- in any occasion where you have not recommended an area be -- have the criteria to be redeveloped?

MR. DOYLE: Actually, she did. Tonight she said that one of the buildings she didn't believe met the criteria. However, the land that is not part of the building may be necessary for site circulation for the effective redevelopment of the --

MR. HOFFMAN: Okay, Mr. Doyle, you didn't listen to my question. My question was, have you ever determined that any of the area, I did not say property, you understand what I'm saying, any of the areas in any of those cases did you ever determine that they did not meet the criteria?

MS. BOGART: I appreciate your comment and question. My job as a planner, I feel, is just to provide the Board and the Governing Body the tools so they can identify and determine what they
1 want to do. And typically, I'm usually brought in
2 when it comes down to the eleventh hour, when
3 they've had a master plan or a Central Business
4 District plan that hasn't worked. It's like, now
5 what do we do, can we do a redevelopment. And I go
6 through an analysis and I say, this could meet this
7 criteria, this could not, this could -- but the
8 reality is, it's not my determination. It's the
9 Governing Body; it's the Planning Board. And that's
10 what's happened here throughout the last 15 years.
11 It's the Governing Body and the Planning Board who
12 have determined continually that not only does the
13 area need improvement, but also needs redevelopment
14 in order to improve. And my job as a planner, I
15 feel, is just to provide them the information so
16 that they can make that determination?
17 MR. HOFFMAN: So my impression is that
18 in all the cases you were involved with, you've
19 always met the desires of the people who've
20 appointed you?
21 MR. BOGART: Well --
22 MR. HOFFMAN: Thank you. That's all.
23 MR. DOYLE: That's an unfair question.
24 MR. PETROW: Robert Petrow, 6
25 Hawthorne Terrace, Saddle River. I have one
question. Are you bonded by the State to work on this project?

MR. DOYLE: I object.

MR. PETROW: Do you have a bond?

MR. DOYLE: I object.

MR. PETROW: On what basis, might I ask?

MR. DOYLE: It's not relevant to this procedure.

MR. PETROW: Why isn't it?

I asked a simple question, are you bonded --

MR. DOYLE: It presupposes --

MR. PETROW: So in other words, she's not bonded. Is that what you're telling me?

MR. DOYLE: It presupposes --

MR. PETROW: She's not bonded --

MR. DOYLE: It presupposes --

MR. PETROW: It's a yes or no answer.

MR. DOYLE: It presupposes the validity of your question.

MR. MARTIN: Mr. Doyle, Ms. Bogart was qualified as an expert professional planner.

UNIDENTIFIED SPEAKER: But she's not bonded.
MR. MARTIN: Is that a requirement?

No.

MR. DOYLE: Thank you, Mr. Martin.

MR. PETROW: So is she or is she not bonded?

MR. MARTIN: She's a qualified professional planner with --

MR. PETROW: She's not bonded. Do you hear that folks?

MR. VANDERKUEGEL: Who's paying her.

MR. SCHWINDNER: Any other questions or comments? We'll take one more comment after this, if there are any.

MS. McGUIRE: Jill McGuire, 154 Linwood Ave. I'm just as an observer and a resident. I'm not involved in this area, but I did want to make note that I did notice that there was a discrepancy in the determination analysis today with Lot 5 in comparison to other areas in that zone, and I find that troubling as an observer.

MR. DOYLE: Hold on. Lot 5?

MS. McGUIRE: The one building that actually doesn't have any commercial retail residents, actually.

MS. BOGART: What was the discrepancy?
MS. McGUIRE: I feel that it seems that you found fault with pretty much every lot in that zone with the exception of that Lot 5, except the --

MS. BOGART: Lot 5 was the one lot that was redeveloped in accordance with the development plan.

MS. McGUIRE: It's vacant.

MS. BOGART: But it was redeveloped in accordance with the redevelopment plan.

MS. McGUIRE: With the criteria that you gave, I just feel that it seems a little -- there's a little bit of a discrepancy, in my opinion as an observer. I'm not an expert, I'm just making note as an observer.

MS. BOGART: Thank you.

MR. DOYLE: Thank you.

MR. BUETI: Ed Bueti, 91 Chestnut Street. I have an e-mail from a resident. Her name is Alicia Wallace at 198 Lincoln Boulevard, and she asked me to read this off of an e-mail. I don't have it printed out, so excuse me if I stumble through this.

"First, a special thank you to Mayor Lamatina and all of the municipal employees for all
their hard work and dedication. Everyone here has something in common, that they want what is best for their homes, their neighborhoods, their town. It is hard to imagine that there hasn't been more agreeing than disagreeing due to the fact that the people here truly love Emerson, me included.

"Most agree that we need the affordable housing, just as the courts have ordered. There's no dispute there. Is there a better place to put it? Does it have to be so big? Can it be broken into two or three projects so that all the apartments aren't so heavily concentrated in just one area? How is it beneficial to Emerson to have giant size buildings surrounded by small run-down buildings? What will an additional 2 to 300 cars do to the traffic? Even with the road improvements, will there be an additional 2 to 300 cars on the busiest corner of town? There is no white washing that fact. Many commercial property owners have strong ties to the area, and they feel alienated, as well as the residents whose voices go unheard. Is there a way to bridge the gap? Would Emerson have to build a four-story building if they had offered any type of incentives to current commercial property owners to add affordable housing? My
questions are more to provoke thought and
conversation since I was not able to be there	onight.

"Facade improvement programs are
incentive programs created to encourage property
owners and businesses to promote the exterior
appearance of their buildings and storefronts. They
focus on either commercial or residential properties
in historic and non-historic areas, and provide
financial incentives, such as the matching of a
grant or loan, a tax incentive and design
assistance. In addition, the Township can opt to
make necessary improvements mandatory by ordinance,
giving the owners a set amount of years to complete
the projects. In one of the an examples
attached," -- and there's attachments with this, and
she'll e-mail you this letter along with what she's
proposing --

MR. MARTIN: Could you just have her
direct it to the secretary, and then the secretary
can --

MR. BUETI: Yeah, I will do that,
okay. I lost my place here.

"These programs have been very
successful in many other areas. Attached are two
examples currently being utilized. The third
attachment is an example of an explanation of the
benefits of the program. Any commercial property
owner that does not want to partake in the mandatory
improvement ordinance will most likely sell their
property, and then the new owners will make the
improvements using the Township's already
established core designs. Perhaps some combination
of your plan and a program like this would be a good
compromise, leaving some semblance of a small,
quaint town atmosphere that people have grown to
love and depend on. Thank you for your time and
consideration. I hope everybody has a good night."
And it's signed Alicia Wallace, and that's it.

MR. SCHWINDER: Just a comment on that
person's e-mail. Unfortunately, she was not here	onight. We've listened to the testimony of planner
and our Borough redevelopment counsel, and when they
discussed how long this project has been discussed
and how only one property owner took advantage of
redeveloping his property.

So it isn't that we haven't -- we
haven't rushed into this, certainly, and this is a
project that was started before the time of many on
this Board, and before the current Mayor and
Council. So this is a project that I believe, if you listened to the Borough planner tonight, is something that was started in 1999, and it's been going on for 17 years. So we are in the process now just to reaffirm the designation of this 1.9 acres as an area in need of redevelopment based on current planning standards, and the recommendation of our Borough planner. And we would like to have the future of Emerson, downtown Emerson, be a thriving area, and one that meets the standards that is going to attract people to town, businesses to town, and customers to businesses. So that is my response, respectfully, to the person who wrote that e-mail, and I respect her opinion.

Does anybody else have a comment?

MR. VANDERKUEGEL: May I make one more comment, sir?

MR. SCHWINDER: This was the last comment, as I mentioned before. I said one more comment.

MR. VANDERKUEGEL: She does have to be bonded, sir, for the record --

MR. SCHWINDER: We have to be out of here by 11 o'clock, as I said.

MR. BUETI: Thank you for your answer.
It will be on public record so she can read it, and I appreciate you giving me the opportunity to read her letter, which I just read for the first time myself.

MR. SCHWINDER: I'll entertain a motion to close to the public.

UNIDENTIFIED SPEAKER: We have time.

UNIDENTIFIED SPEAKER: What are you afraid of?

MR. SCHWINDER: We have allowed numerous people to speak tonight, and we have to be out of here at 11 o'clock, and we have a little more business to conduct. So that's why I'm asking for a motion from the Board --

UNIDENTIFIED SPEAKER: We have 19 minutes before the meeting ends.

(Board discussion.)

MR. MARTIN: There will be a two-minute --

MS. DiPAOLA: I have a quick question for Mr. Doyle.

MR. MARTIN: -- and everybody else, two minutes until ten minutes of, and then no more questions.

MS. DiPAOLA: Danielle DiPaola, 93
Union Street, Councilwoman, Borough of Emerson.

In light of all of all the work that was being done in the construction zone, I've been making a lot of phone calls to representatives, State representatives with the Lieutenant Governor's office. And I found out through speaking to the Office of Economic Development that the only way that you could give somebody a tax abatement is if their area is an area in the need of redevelopment. And when I found this out, I started thinking about all those development areas in town that were going to go through the process again -- so I just have a quick question. If this is designated as an area in need of redevelopment again, can we give these property owners a chance to build on their properties and give them incentives, like tax abatements in order for them to do it themselves, instead of bringing in -- instead of bringing in a redevelopment firm.

MR. MARTIN: That might be outside of her professional expertise as a planner, but --

MS. DiPAOLA: I was asking Mr. Doyle.

MR. MARTIN: Mr. Doyle is not testifying. But if you can help...

MR. DOYLE: Are you talking about
Block 419, or are you talking about --

MS. DiPAOLA: I'm talking about whole area in general, and especially 419 since that is on the chopping block right now.

MR. DOYLE: With respect to 419, no.

As you know, the Governing Body has already entered into an agreement with a redeveloper to redevelop Block 419. So the answer with respect to 419 is no, that the Governing Body has already voted to allow a redeveloper to redevelop this area.

MS. DiPAOLA: Can I just ask you before I finish, then why is this back on the chopping block? Because I'm confused, as a Governing Body member, why this is going through again. Are we just dotting our I's and crossing our T's? We've already promised something to a redeveloper that we're not even sure as a Borough is actually permitted by law to be handed over to them by any eminent domain --

MR. DOYLE: It's absolutely permitted by law. We could absolutely move forward. We absolutely had the authority to enter into the agreement based on the 2004 designation. However, as I indicated at the outset of the meeting, we believe that there is the potential that because of
the age of the study it could be challenged, so it was in the interest of municipality to reconfirm that this area continues to meet the criteria under the Local Housing and Redevelopment Law as an area in need of redevelopment. The good news is, at least based on this planner's observations and professional opinions, this area continues to meet the requirements, 419, continues to meet the requirements to confirm the designation as an area in need of redevelopment.

With respect to the other lots and blocks that received notices but which there was no testimony or hearing this evening, nothing prevents those property owners tomorrow morning from moving forward with redeveloping their properties in accordance with the current zoning, which I believe is mixed use, residential, et cetera.

MS. DiPAOLA: Okay. And I just have a comment. So all this criteria is met based on the testimony of this planner. And you know me, you know I like to challenge things. So just like you have your legal opinion, another planner may have a different opinion than Ms. Bogart?

MR. DOYLE: Correct.

MR. SCHWINDER: I will entertain a
motion to close to the public.

UNIDENTIFIED SPEAKER: One more.

MR. O'BRIEN: Tim O'Brien, 118 Dyer Ave. You said this has been going on for a long time. You're going after the business to clean up and do whatever. What about the town or Borough street lights that have been knocked down for years, traffic cones put over them, not working. Lead by example, no?

MR. DOYLE: I don't know what specifically you're talking about --

MR. O'BRIEN: Oh, there's a few.

MR. DOYLE: What I can tell you, though, is what the Governing Body has done -- noticed because of the improvements that you are living through right now, it is, I believe, the hope of the Mayor and Council, that as a result of the improvements to Kinderkermack Road, we're going to experience some improvement to the downtown area which is being funded in part by the County, and substantially in part by the redeveloper who's going to be redeveloping Block 419.

MR. O'BRIEN: So you're going to make everyone do everything first, and then the town can do their thing later?
MR. DOYLE: Well, the town is already stepping up -- I think I'm right about that, Mr. Mayor.

MAYOR LAMATINA: $2.4 million project with the County of Bergen to redesign Kinderkamack Road, that's from Lincoln Boulevard, the Borough has also applied for a $800,000 grant, transportation program to do the streetscape from Lincoln Boulevard North to the border of Westwood --

MR. O'BRIEN: Okay.

MAYOR LAMATINA: -- and south to the border of Oradell --

MR. DOYLE: Which includes, by the way, street lights, street lamps, pavers --

MR. O'BRIEN: Okay.

MAYOR LAMATINA: -- so we are trying.

MR. DOYLE: Thank you, Mr. O'Brien.

MR. SCHWINDER: Thank you.

MR. SANTANGELO: Good evening. My name is Mark Santangelo. I own 85 Kinderkermack Road. A comment for Mr. Doyle, or a question. You said that the present owners can, outside of 419, can take upon themselves to meet the redevelopment criteria.

MR. DOYLE: Yes.
MR. SANTANGELO: What about those of us who have already put substantial dollars into our buildings since 2004 that came in front of this Board, came in front of the town, and our plans were approved, and we did rehab the buildings? Are we still at risk, or do we come out of the redevelopment area now? What happens to us?

MR. MARTIN: I don't think Mr. Santangelo is in 419, or am I missing something --

MR. SANTANGELO: No, I am not in 419.

I made that clear --

MR. DOYLE: -- the rest of the area --

MR. SANTANGELO: Yeah. So that's my question --

MR. DOYLE: And it's a really good question.

MR. MARTIN: For 50 years I've driven by your building. I understand where you're located. I just want to make sure that that's not the subject of tonight's testimony. Is that correct?

MS. BOGART: Correct.

MR. DOYLE: If it's not, then it's a really good question. It's a really fair question. You have a right to that answer. The problem is,
because I don't know what's happened to your property and because I know that we -- we haven't studied it, I can't give you an opinion as to the case. I can tell you that, and this is purely anecdotal, for whatever it's worth, there was a property that was redeveloped in accordance with the local land use laws, mixed use, and you heard our planner tonight testify that she doesn't believe that the building any longer meets the criteria, however, we may need the lot, part of the lot, in order to effectively develop the balance of the redevelopment area. So to your point, and it's purely anecdotal, if buildings have been approved, there is the possibility that when and if we move to that area, Ms. Bogart may determine that your property and your building no longer meets the criteria to continue to be designated. But we haven't studied it yet. I don't want to give you false hope, but by the same token, I don't want you to lose sleep tonight. Because as you can see --

MR. SANTANGELO: I won't lose sleep, trust me. The point is, you made the comment that you have the ability to conform, and a lot of us that are in this room and that own buildings that are not in 419 have done that already.
MR. MARTIN: I think a lot of your neighbors have done it.

MR. SANTANGELO: Yes, yes, and the town never came back and said, you know what, you satisfied the criteria, and, Mr. Mayor, you were the mayor at the time, by the way, you should come out of the zone. The town never came to us --

MAYOR LAMATINA: If you petition the town, the town can take you out of the zone. It's part of redevelopment law --

MR. SANTANGELO: That's great, and I just want to know --

MR. LAMATINA: We're trying to get done with 419 --

MR. SANTANGELO: I know that. I'm trying to ask a general question because there's a lot of concern from us -- I mean, there's a lot of people here that own buildings that are not in 419. We're looking at the bigger picture, which is basically the whole downtown area, except for a few properties. That's why I'm asking that question.

MS. BOGART: If I may, the adopted redevelopment plan allows for properties to be taken out of a redevelopment designation as long as they met the redevelopment criteria that was set forth.
MR. SANTANGELO: Right, but the criteria back in '04 and '08?

MS. BOGART: I believe, and I'm not got the Governing Body or the Land Use Board, but I believe that as part of this process, as long as the property has been redeveloped, that they'll be taken out. Because right now, between '04 and '08 and today, nobody has analyzed that, to take anybody out or put anybody in --

MR. SANTANGELO: Right, I just want to bring that to you --

MR. DOYLE: It's absolutely a fair comment, and we're going to get there.

MR. SANTANGELO: Great. I'm done.

Thank you.

MR. DOYLE: Thank you, sir.

MR. SCHWINDER: I'd like to entertain a motion to close to the public.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: We are now closed to the public.

There is one more item that we have to discuss.

(Discussion, 10:52 p.m. to 10:54 p.m.)
MR. SCHWINDER: On December the 6th Mayor and Council determined that additional amendments were necessary, and introduced on first reading Ordinance Number 1535-16 proposing the Board's recommended amendments, along with two additional amendments to the Redevelopment Plan of the Central Business District. I would like to ask Ms. Bogart to please explain what those additional amendments are, explain it to the Board, as we are requested to comment to the Mayor and Council.

MS. BOGART: Sure. A couple of months ago there was discussion of some minor amendments to the Redevelopment Plan with regard to some changes in height and setback, and whatnot. And after the public hearing, this Board saw fit to recommend to the Governing Body the amendment to the Redevelopment Plan. Since then in December the Governing Body had a public hearing on it, and then introduced the ordinance last week, or so. There were two minor changes from when you saw it the first time, and so the Governing Body saw fit to have you just review it one more time and acknowledge those changes.

MR. SCHWINDER: And what are those
changes?

MS. BOGART: One of which was that, remember, we increased the height and allowed for a greater height towards the rear of the property along the railroad tracks, there was nothing in the ordinance that you saw that the height along the railroad tracks had to be set back from Kinderkermack Road. So the Governing Body said they wanted a minimum of five feet in setback, so those apartments that are located on the fourth story have a balcony that is a minimum of five feet so that you wouldn't see on Kinderkermack Road. So prior, that dimension was never set forth in the regulation.

MR. SCHWINDER: So the purpose of that amendment is so that the fourth story would not be visible from Kinderkermack Road, or it would be set back so it wouldn't be towering over the street.

MS. BOGART: That is correct. And it wouldn't be towering originally, but there was nothing in the ordinance that specifically gave it dimension. So now we have a dimension.

MR. SCHWINDER: So a five-feet setback, that's number one.

MS. BOGART: That's number one. The second one is with regard to parking. We had a
great discussion about parking requirements and the
shared parking and hiring a traffic expert if the
developer came in and wanted a parking reduction.
The Governing Body decided that instead of possibly
requiring the parking expert, they wanted to mandate
that the Planning Board or the Land Use Board hire a
traffic expert if any developer is seeking a
reduction in the parking requirement. So that is
now a mandate, that we now have to have our own
traffic expert to review any shared parking
reduction.

So there are two minor things, two
things that I think help the regulations and help
this Board as they go through the site planning
process.

MR. MARTIN: And that would be at the
expense of the developer?

MS. BOGART: Correct.

MR. DOYLE: You actually raised that
with me earlier today, Mr. Martin, when I prepared
you for this. If you wanted to include that, I
don't believe that's substantive enough that we
would need to have the Mayor and Council reintroduce
that and send it back down to you, so we don't see
any issue --
MR. MARTIN: It's just the ministerial act or the process.

MR. DOYLE: That's exactly right.

MR. SCHWINDE: Do any Board members have any comments or questions on this particular aspect?

Then I'd like to entertain a motion to open it to the public.

MR. MARTIN: Just as to the setback and any traffic studies, if needed.

(Motion made and seconded; all in favor.)

MR. SCHWINDE: Any comments on the two amendments that were introduced at the Mayor and Council meeting and brought to the Land Use Board?

Seeing no hands, then I'll entertain a motion to close to the public.

UNIDENTIFIED SPEAKER: I believe everybody is gone, and I believe that we did something wrong here. I'm the only one left here that's going to object to this fourth building?

MR. MARTIN: Well, it's a setback of five feet --

UNIDENTIFIED SPEAKER: I know what a setback is. It's not much. Five feet is this much.

MR. MARTIN: We're not talking about a
level; the issue is a setback.

UNIDENTIFIED SPEAKER: Well, I want to discuss the whole situation of this fourth floor.

MR. SCHWINDER: Step forward.

Give him the microphone.

State your name and address for the record, please.

UNIDENTIFIED SPEAKER: First of all, this thing should be done over again with public here. Everybody left. I don't think this was a good thing to do.

MR. SCHWINDER: I told the public we were not completed with the meeting, we had more business to --

UNIDENTIFIED SPEAKER: You were closing the public speaking, so everybody left. I'm the only one left here.

MR. SCHWINDER: We closed to the public on a subject, just as we --

UNIDENTIFIED SPEAKER: Is that on the agenda there, on that paper --

MR. DOYLE: Yes --

UNIDENTIFIED SPEAKER: About this fourth floor?

MR. MARTIN: No, no, the fourth floor
is not the issue; it's a setback, sir. A setback --

UNIDENTIFIED SPEAKER: What about the

fourth floor?

MR. MARTIN: It was just testified to

as to a setback of five feet for the fourth floor

for a balcony area; is that correct?

MR. DOYLE: That's correct, Mr.

Martin.

UNIDENTIFIED SPEAKER: At the last

meeting that I went to, it was three floors. Now,

all of a sudden, we're talking four floors.

MR. MARTIN: No, that's not accurate.

UNIDENTIFIED SPEAKER: It's not what?

MR. MARTIN: Ms. Bogart, it was four

floors, and you're only testifying as to a setback;

is that correct?

MS. BOGART: Correct.

UNIDENTIFIED SPEAKER: I heard

somebody say fourth floor.

MR. MARTIN: That's nothing new.

MR. SCHWINDER: That was already

approved.

MR. MARTIN: Exactly.

UNIDENTIFIED SPEAKER: When was that

approved?
MS. BOGART: November, I believe.

MR. DOYLE: At the November meeting you made a recommendation to the Mayor and Council for four stories based on --

UNIDENTIFIED SPEAKER: Okay, but was it brought up to the public.

MR. MARTIN: Yes, it was.

MR. SCHWINDER: Yes, it was.

UNIDENTIFIED SPEAKER: Were there three people at the meeting? You know what's bad, it's like there's not -- we're not communicating with us people.

MR. DOYLE: The public was noticed, as required. Again, there was a presentation before the Mayor and Council, so it's been at least --

UNIDENTIFIED SPEAKER: How was the public notified? I don't go to every council meeting that there is, so I don't feel like we -- as we, as the people of Emerson, have a right to go through this.

MR. SCHWINDER: We don't have a vote on the amount of floors. We only recommended to the Mayor and Council --

UNIDENTIFIED SPEAKER: Okay, well, then we need to know --
MR. SCHWINDER: -- so that was -- we recommended, they took the recommendation, they accepted the recommendation, and they put it into -- they finalized it into a resolution.

Tonight we are -- in the last meeting of the Mayor and Council they decided to bring forth two additional amendments to that particular ordinance. And the two additional amendments were for the fourth floor to be set back -- the fourth floor, which was already approved --

UNIDENTIFIED SPEAKER: We talked about four floor, but that was the back end of the building, not five feet from Kinderkermack Road.

MR. SCHWINDER: I'm sorry, it was the fourth floor on Kinderkermack Road. I'm sorry, sir, that's fourth floor on Kinderkermack Road.

UNIDENTIFIED SPEAKER: I even agreed with the Mayor. I said, you know, I could handle the fourth floor in the back because it's in the back. But when you go up four floors -- there was a lady at the Council meeting the other night, she was down in Clark, or somewhere down there where the building who's doing this, or may be going to do this, has a building there that's four stories, and she says it's a monster. It is a monster.
MR. MARTIN: I think you're saying the same thing. The fourth floor will be pushed back off the road, so --

UNIDENTIFIED SPEAKER: Not five feet, that's --

MR. MARTIN: I think it's a little confusing. If the front of the building is here and it goes up three floors, the fourth floor will have to be set back five feet from --

UNIDENTIFIED SPEAKER: I know what you're saying. I know what a setback is. I work in construction.

MR. MARTIN: -- five feet from the road, that's not true. It's five feet back from where the third floor ends.

UNIDENTIFIED SPEAKER: From where the third floor ends, how far back is that then?

MS. BOGART: It would be 17 feet.

MR. SCHWINDER: 17 feet from the road.

UNIDENTIFIED SPEAKER: No, I got what you're saying, but that's still not the way -- the last I heard, that's still not the way it was. It was four floors in the back building.

MR. SCHWINDER: We are not in a position to make any changes to what's already been
accepted as an ordinance. We are here tonight because we've been asked to approve two amendments to the master -- to the Redevelopment Plan, and what Ms. Bogart presented tonight is the five-foot setback, which the Mayor and Council had discussed, and also the ability of the town or the request to have the town hire a traffic study professional to review the plans of the applicant. That is what we've been asked to do. The fourth story has already been accepted. That was a month ago.

UNIDENTIFIED SPEAKER: I, myself, personally feel like I'm being hoodwinked, because as far -- I don't know how many people in Emerson know about this. I saw it in the paper, just the last week it came out in the paper, and that's the first I ever heard of it. Of course, I don't go to Council meetings, my bad, but the people of Emerson have to know about this.

MS. BOGART: This is the second hearing with the Land Use Board with regard to this ordinance, and we had two hearings already before the Governing Body, and we'll have a second reading for the Governing Body in a week or so.

MR. SCHWIN德尔: So, did you hear what Ms. Bogart --
UNIDENTIFIED SPEAKER: I hear that.

MR. SCHWINDER: Now, what we're doing is, we're recommending to the Mayor and Council that they approve these two amendments. And the Mayor and Council are the ones who vote on this. They only take our recommendations for or against.

UNIDENTIFIED SPEAKER: Well, here's my problem, too. I'm computer illiterate. I'll be 72 so, I just can't handle computers. So I can't go on-line, I can't do this. I have a newspaper, which -- that's the way I was brought up as, can't change. But the people of Emerson have to know about this, and I don't think that there's a lot of people that know about it.

MR. SCHWINDER: Well, the Mayor and Council meetings are published. They're noticed in the paper, they appear on-line --

UNIDENTIFIED SPEAKER: I guess I have to do something like a letter to the editor, or something --

MR. SCHWINDER: I don't know if the editor is going to help you know when to come to meetings. If you know when the meetings are -- the meetings are scheduled regularly. They're on the bulletin board in front of the municipal building,
you'll always know the dates of our meetings. You
don't need to be a computer expert --

UNIDENTIFIED SPEAKER: I don't want to have to sit through, you know, nothing. That's not my deal.

MR. SCHWINDER: I saw you attended the Mayor and Council meeting the other night, you spoke up, your voice was recognized and respected just as it is tonight. But in this particular case I'm going to have to say, you're a little bit wrong on this particular aspect, because the fourth floor is already approved.

UNIDENTIFIED SPEAKER: Let me ask you one thing. Why did we do this now, why after everybody left?

MR. SCHWINDER: I announced to the public that the first part of the meeting was over, please either sit down or be quiet, we are not finished with the meeting. At 10:30 I said we have --

UNIDENTIFIED SPEAKER: You didn't elaborate on what we were going to be talking about. I think people would have stayed.

MR. DOYLE: At the beginning of the meeting Mr. Schwinder read a script of the two
items, which included this. The beginning of the
meeting, he read a script.

MR. SCHWINDER: This was announced.
Right at the beginning of the meeting.

UNIDENTIFIED SPEAKER: It wasn't on
the agenda, though.

MR. DOYLE: It was.

MAYOR LAMATINA: May I point out that
this public comment is on the amendment to the
ordinance, so I think we really need to focus -- do
you disagree with the five-foot setback?

UNIDENTIFIED SPEAKER: Absolutely. I
disagree with the fourth floor. I told you already,
in the back I can handle it --

MAYOR LAMATINA: The answer is you do.

Thank you.

UNIDENTIFIED SPEAKER: It's clean up
in the front, but not the fourth floor.

Did you find that? Can I see that?
It's not on here. This is what I was
looking at. It's not on here. Good night, folks.

(Discussion.)

MAYOR LAMATINA: I see it's not on the
agenda, but at Mayor and Council if there's an item
that wants to be added to the agenda, it can be
added the unanimous vote by the Board. Is that true for the Land Use Board?

MR. DOYLE: This is a standard -- you don't have to notice for this. It's just a referral from the Governing Body. It's not a public hearing; it's just a referral for your determination.

MAYOR LAMATINA: Can we add it -- do we need to add it to the agenda by a vote --

MR. DOYLE: In fact, I think it's very kind and generous that the Land Use Board chooses to open it to the public. This is purely a --

MR. MARTIN: The point of the matter is, the Governing Body makes a decision on this. So this is a referral. You have your chance to tell the Governing Body why you don't think the five-foot setback is appropriate. And that's the determining body --

MR. DOYLE: Mayor, the next meeting is the 20th, correct?

MAYOR LAMATINA: Correct.

MR. DOYLE: So I would like to announce for anybody that wants to be heard, there will be a full hearing on this amendment that was referred to the Land Use Board for its recommendation. There will be a full hearing on
December 20th beginning at 7:30 p.m. in the chambers of Mayor and Council.

MAYOR LAMATINA: Actually, the entire ordinance, not just this --

MR. DOYLE: That's actually correct, Mr. Mayor. That's right.

MAYOR LAMATINA: You can object to the fourth story, you can object to anything that's in the ordinance, that's Mayor and Council on December 20th.

UNIDENTIFIED SPEAKER: Will you put that in the paper --

MR. DOYLE: Actually, it is noticed in the paper too, Mr. Mayor. It has to be advertised.

MR. MARTIN: On that ordinance.

MAYOR LAMATINA: I'm telling you tonight.

UNIDENTIFIED SPEAKER: Thank you.

MS. BOGART: As I mentioned, this Board already reviewed this ordinance. It just came back as a courtesy to review two minor issues. The reality is, this Board's only jurisdiction is to review the ordinance for consistency with the Master Plan and Redevelopment Plan, which you already determined that it was consistent, so -- it's not
supposed to be open to the public, this is a work go
document for your recommendations back to the
Governing Body.

MR. MARTIN: Your input is
appreciated, and you can test that ordinance. You
can go to the Governing Body. The Land Use Board
has no binding effect on that.

MR. SCHWINDER: We can't answer your
question.

UNIDENTIFIED SPEAKER: I just wish
that everybody could have been here to hear that,
that's all.

MR. SCHWINDER: Well, just tell your
friends that December 20th it will be discussed at
the Mayor and Council meeting.

MR. MARTIN: Which may be here.

MR. SCHWINDER: Thank you, sir.

MS. McGUIRE: Jill McGuire, 154
Linwood Ave. I wasn't planning on speaking, but
when he came up, I'm the girl that he was speaking
about who went to Westfield and saw a four-story
building that looked exactly like the JMF building
in Westfield, it was all residential though, and it
had a setback. And having seen it firsthand, I am
against the five-foot setback. I would like it to
be more. It is not -- it doesn't soften the look as was suggested by JMF. Seeing it firsthand, in stark reality, standing in front of it in the Trader Joe's parking lot -- if you want to look it up and Google it, it really is there, it's the building, and I'm against it.

And as far as for clarification, what happened on Tuesday was not approval of the amendment. It was a first read that was voted on. So just so you know, it wasn't approved, and there will be a second read and public hearing on the 20th, which I'm aware of. And I'm sad that it wasn't on the agenda this evening. I'm not saying that everyone in the room was planning on listening to this topic, but possibly. And I'm concerned, very concerned, about this particular project, and further concerned with what was going on this evening with possibly how it will move forward and the way that it will move forward with the property owners. Like I hope that it's something that's, more -- that everyone is receptive and walks away with a smile on their face. And it makes me sad to see that these people, businesses that I participate in as a customer, Cork & Keg, Ranch Cleaners, the gelato place, these are all places -- Ranchero, I
mean, that's a nice restaurant. I mean, I felt a little sad to hear you say that it's blighted. It's a good restaurant. The Nerds play there, fun stuff going on there.

MR. MARTIN: Just comments as to the five-foot setback --

MS. McGUIRE: Sorry. I'm against the five-foot setback.

MR. MARTIN: -- and the traffic consultant, and how that person is --

MS. McGUIRE: Right. Sorry.

MR. MARTIN: It's okay. You can contest that issue with the Governing Body. If the Board does nothing tonight, on the 20th they don't even have somebody recommending push it back -- maybe I'm wrong, but I believe your consideration is push it back further or get rid of it. Those are two things for the Governing Body --

A. Well, right. I totally -- right. If it has to be, which I understand -- I mean, look, I get it. It's big decisions that are being made, so I'm not one of those people who stomps my feet or throws a temper tantrum if things don't go my way. I know that things go on that I'm not necessarily going to like sometimes, but if the four-story
exists I hope that the setback maybe is a little
more, because it is really high.

And having seen it -- everyone else, I
think, has seen the plan, where it's, like, well,
this is conceptual. And all these times I've been
going to the meetings and it's, like, conceptual
drawings. And then it was, like, I went to go to
dinner with my cousin last Saturday and I get out of
my car and I walk and I'm, like, oh, my goodness,
that's the building. And it was pretty interesting
to see firsthand. And it's tall and it's big, and
it's, you know, the setback isn't much of a setback.

MR. SCHWINDER: Ms. McGuire, I applaud
the fact -- I saw you at the last Mayor and Council
meeting, I've seen you at other meetings. I applaud
the fact that you attend, that you participate, that
you state your view, and I thank you for your view
tonight. But I will, just in defense of this Board,
I will read to you again what I read to a full
house --

MS. McGUIRE: Oh, no, I heard you --

MR. SCHWINDER: -- at the beginning of
the meeting.

MS. McGUIRE: I know.

MR. SCHWINDER: So we were up front
that this was going to be discussed. I notified the audience that we had more business to take care of tonight, and I tried to cut the public session at 10:30. As it happened, we let it continue, and here it is at 11:15, and we were supposed to be out of here, according to the Board of Education, by 11. So I just wanted to make sure that you understood that we did cover this --

MS. McGUIRE: I understand. I'll be honest, I'm not even that savvy. The other night when they did the first read, I thought what everyone was voting on was pulling the reading. Because I figured when you read -- when an amendment is proposed, that they read what the amendment is. And so when nothing was read and everyone started voting, I thought they were pulling it from being read. And it wasn't until after someone said, you know, that already got voted on. And I was like, oh. So I think, you know, sometimes we residents are a little naive. But coming to these meetings, and you're all very savvy at this point, but I'm still getting my feet wet, so...

MR. SCHWINDER: Well, continue to do so.

MS. McGUIRE: I'm trying.
MR. SCHWINDER: And thank you for your comments.

MS. McGUIRE: Thanks. Have a good night, everyone.

MR. SCHWINDER: This is definitely the last. State your name, please, and address.

MR. SCALA: Dominic Scala, 188 Kinderkermack Road.

MR. SCHWINDER: The topic is the five-foot setback and --

MR. SCALA: Since the meeting was cut sure and not everybody else was able to speak about the first section, will that continue on the very next meeting?

MR. SCHWINDER: No.

MR. MARTIN: It wasn't cut short; it was a full hearing on it.

MR. SCALA: People still wanted to come up, and you cut it short.

MR. MARTIN: Well, we cut it short because we had additional issues --

MR. SCALA: So it's not going to continue the next meeting; the first section is done?

MR. MARTIN: It's been fully done,
public comment was cited, and no one else raised their hand, and that was it, right?

MR. SCALA: No, that's not true.

MR. MARTIN: I'm sorry. Maybe I'm wrong. Did anybody else observe any other hands up?

MR. SCALA: You called the last person, but there were other people still waiting to come up. I got my answer. Thank you.

MR. SCHWINDER: I'll entertain a motion to close to the public.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: So we have two things that we've been asked to do. The first thing we were asked to do by the Mayor and Council was to consider recommending to the Borough whether or not certain blocks and lots located in the Central Business District meet the statutory criteria to be designated as a Condemnation Redevelopment Area pursuant to the New Jersey Local Redevelopment and Housing Law. We have heard testimony from Ms. Bogart, we have heard comments from the public, and at this point in time I would like to entertain a motion if this Board will be recommending to the Borough counsel to accept the designated area as one that is in need of redevelopment in a Condemnation
Redevelopment Area. So I will accept a motion on that.

(Motion made.)

MR. SCHWINDER: We have a motion, and that's in favor of recommending the area in need of redevelopment.

MR. DOYLE: And that is only as to Block 419 and the lots identified. Block 419, Lots --

MS. BOGART: 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10. No.

MR. SCHWINDER: Okay, that's on the record. Thank you. A second on that?

(Motion seconded.)

MR. SCHWINDER: Any discussion, further discussion tonight? Anyone?

Hearing no comments, then roll call --

MAYOR LAMATINA: I just have a question for Counsel. Do I vote, Mr. Doyle --

MR. MARTIN: You do not.

MAYOR LAMATINA: I do not vote. Thank you.

MR. MARTIN: I'm sorry, I should have brought that up earlier.

(Roll call; all in favor.)
MR. MARTIN: Mr. Schwinder, I have a resolution. I did make a change of Lincoln Avenue, that was a mistyping there, and just put public streets, so that memorializes the --

MR. DOYLE: Wherever Lincoln Avenue appears in there, Mr. Martin, we'd ask that it say public streets.

MR. MARTIN: Yes. My error.

MR. DOYLE: No, my error, but thank you.

MR. SCHWINDER: The second piece of business we were asked or were directed by the Mayor and Council to review had to do with the amendments to the Redevelopment Plan, specifically the five-foot setback on the fourth floor of any building along Kinderkermack Road in the stated area. Once again, state the area for me.

MS. BOGART: Block 419, Lots 1, 2, 3, 4, 5, 6.01, 6.02, 7, 8, 9, and 10.

MR. SCHWINDER: Thank you. So that's the five-foot setback for the fourth floor, and also the recommendation that the Borough engage a traffic specialist to analyze the proposal by the redeveloper as it pertains to parking and traffic flow.
MR. MARTIN: At the expense of the developer.

MR. SCHWINDER: At the expense of the developer. So I will entertain motion to make that recommendation to the Mayor and Council. So I'll await a motion.

(Motion made and seconded.)

MR. SCHWINDER: We have this motion on the floor. Do we have any further comment?

MR. KUTZIN: So we're recommending back to the Mayor and Council that the proposed ordinance change would go to the five-foot setback --

MR. SCHWINDER: For the fourth floor on buildings fronting Kinderkermack Road.

MR. MARTIN: Or tertiary streets --

MR. KUTZIN: Correct. My question is, after the discussion at the next Mayor and Council meeting could they potentially come back and make some further changes?

MR. MARTIN: They could reject the recommendation. It is simply a recommendation; it's not binding. Or they could adjust it, or adopt it. But it's a good question, and that's why it is a -- it's a recommendation, and that's it.
MR. KUTZIN: And even if they accept the recommendation and pass the ordinance, the ultimate plan that builder follows through with could be something in excess of five feet?

MS. BOGART: No --

MR. MARTIN: They could also eliminate two floors and make it a two-story structure. The Governing Body has a lot of power in this regard. The Land Use Board just wants to make sure this particular finite addressing of the proposed ordinance, because it's up for vote on the 20th, is consistent with the Master Plan, which is what our domain is.

MS. BOGART: Additionally, the Redevelopment Plan requires that the Governing Body amend the plan. The developer is not allowed to come in for a variance. So you'll never see a site plan for this block where they waiver from any of the regulations.

MAYOR LAMATINA: Can't it be greater than five feet? Isn't the language not to be less than five-feet setback?

MR. DOYLE: Minimum, minimum.

MR. KUTZIN: So the final plans could be 7 feet or 10 feet?
MS. BOGART: Correct, and --

MAYOR LAMATINA: Not the final plan, it's the final ordinance adopted by the Borough on the 20th.

MR. SCHWINDER: It says requiring a minimum five-foot setback.

MAYOR LAMATINA: So if the Mayor and Council so chose, it can make the ordinance no less than seven feet --

MR. MARTIN: And the builder can choose to build 10 feet --

MR. SCHWINDER: And just for clarification, Ms. Bogart and Mr. Doyle, on this particular aspect I think several things, maybe I misspoke, but correct me if I'm wrong, the way this will read is, requiring a minimum five-foot in depth setback on the front facade of the fourth floor of buildings facing public streets. That's the amendment.

MR. DOYLE: Yes.

MS. BOGART: Yes.

MR. SCHWINDER: Because I think misspoke before --

MR. ADAMS: I have a question on that. If somebody votes no on that, does that mean that
they're saying you can have zero setback or that we
don't want a fourth floor?

MR. MARTIN: At this time the
recommendation would be not to do anything that's
already currently pending before the Governing Body.

MR. SCHWINDER: Did you hear what Mr. Martin said?

MR. ADAMS: I didn't understand it.
I know what he said, but I didn't understand it.

MR. MARTIN: Right now, there's an
ordinance that going to be pending and will be
decided probably on the 20th of December. If the
Land Use Board rejects this proposed amendment to
the ordinance as a recommendation to them, at this
point it wouldn't be a five-foot setback of the
fourth floor.

MR. ADAMS: It would be a zero-foot
setback.

MR. MARTIN: Of the fourth floor,
that's correct.

MR. SCHWINDER: That's the worst case
scenario.

MR. MARTIN: If this Board doesn't
recommend anything, they can do whatever they want,
again, they can make it whatever they want. But if
pushing it back off so it's not right on top of a
street in Emerson is something that this Board
thinks is appropriate, the Board can recommend it by
a positive referral. If there's some rejection and
the Board doesn't recommend it, there's no setback
of the fourth floor, right now it's pending, it's
equal to the third and second and first floor --

MR. ADAMS: I guess my question is, I
object to zero, I object to five. How do I vote?
I'd like to see a ten-foot setback or a 20-foot
setback. How do I vote? If I say no, that means
I'm saying zero. If I say yes --

MR. MARTIN: It's a good point, and
your job now is to enter into a discussion period
and discuss with the Board members.

MR. ADAMS: I'm objecting to
five-foot, so either way, I lose.

MAYOR LAMATINA: Well, you don't lose.
You want to state what your vote is. The problem,
with Mayor and Council, we talked -- the developer
came in and talked to us about it and said anything
more makes the apartments too small. So 20 feet,
obviously, would eliminate -- so maybe five, seven
feet, maybe ten feet. And again, as Counsel said,
that's the Mayor and Council's problem. We can do
what we want. We need to ask for a referral, so this Board then says to Mayor and Council, we agree that a five-foot minimum setback --

MR. ADAMS: I personally --

MAYOR LAMATINA: -- it could be seven feet or ten feet.

MR. ADAMS: I personally feel that if I vote no, I'm saying it's okay to go to zero, but if they say yes, then it's saying I can go to five foot, and I object to both. So I'm not sure how to vote --

MR. MARTIN: Well, I don't think you -- you can say you want more --

MR. KUTZIN: We can vote it down and make a new motion, whatever you want --

MAYOR LAMATINA: You can set the motion --

MR. ADAMS: But without seeing drawings and understanding all of the mechanical aspects of it, I'm not prepared to say five, six, seven, or ten.

MR. SCHWINDER: Here's another thing you could do. You could vote either way, or abstain, which is not good, and if this Board decides that five feet is proposed, then I would
advise you to show up at the next Mayor and Council
meeting and make your voice heard so that the Mayor
and Council can consider something other than a
minimum of five feet.

MR. ADAMS: I want to participate in
tonight's meeting but I'm not sure how to vote
to get my point across.

MR. SCHWINDER: Well, I think you've
made your point.

MR. ADAMS: I made it verbally, but I
still don't know how to vote.

MR. MARTIN: You can vote no because
you think it should be greater and you want to
petition for greater or at least try to get the
Board members to agree with you.

MR. SCHWINDER: I think it would be a
mistake to vote no and not show up at the Mayor and
Council meeting.

MR. ADAMS: Point well taken.

MR. SUDANO: How about if the Board
recommended that you reach a setback that's
comfortable for both the developer and the Mayor and
Council and this Board, above five, if possible?

MAYOR LAMATINA: I can tell you, we
did discuss in Mayor and Council, and not -- but
before that we brought the planner in, we brought
the developer in, we had and an extensive discussion
with Mayor and Council. And again, there was some
resistance to five feet, and Mayor and Council, we
think five feet is correct -- now, you can say
whatever you want, but I think if you say seven
feet, I think there's going to be an issue with
Mayor and Council. So that's -- you can do whatever
you want.

Am I voting on this?

MR. MARTIN: No --

MR. DOYLE: So you know, whatever you
recommend, you recommend. The Governing Body will
take into consideration, as it always does, this
Land Use Board's recommendation. But it does have
the ability to be able to adopt the resolution over
your recommendation, as long as it articulates the
reasons why it's doing that. For example, you could
say seven feet would be better, and the Governing
Body, if they so choose, could say, we understand
why the Land Use Board would want seven, seven might
be better, having heard from the applicant, having
heard from JMF, that when it does that it will
reduce the size of the unit from 800 square feet for
a studio to 500 hundred square feet for a studio
which makes it not rentable, we're going to adopt an 
ordinance with a five-foot setback, notwithstanding 
the recommendations of the Land Use Board.

So you will not be crippling the Mayor 
and Council. To your point, you haven't heard a lot 
of that, but the Mayor and Council did hear that, 
really going much more than that, reducing the size 
of the unit, which they would argue -- they would 
argue, and I'm not suggesting they're right,

unmarketable.

MR. SUDANO: Are those numbers 
accurate? Or are you just throwing out 500 and 700 
square feet --

MS. BOGART: He was just throwing it 
out, because the studios are like 500 now, so they 
would be much lower.

MAYOR LAMATINA: And the planner, I 
think, has a position, correct, Ms. Bogart, you have 
a thought on the five-foot setback?

MS. BOGART: Well, we talked a little 
bit about the marketability of the units because a 
lot of the studios are up top, and they are, right 
now, 500 square feet, which is minimal. And then at 
the Mayor and Council we talked about maintaining a 
balcony that was actually usable, because the
original concept had three foot balconies, some areas, you can't even put a chair out there. So that's why the Mayor and Council said, we want a minimum of five feet to make sure that it's actually a usable balcony.

MR. SCHWINDER: Mr. Adams, perhaps, however you vote tonight and you show up at the Mayor and Council meeting, maybe there is some further discussion that can be held with the developer at the recommendation of the Mayor and Council that has something to do with the roof line. So maybe the roof line can be somewhat controlled so that at five feet it won't be as visible with a higher incline versus something less low.

So these are all things that you can suggest to the Mayor and Council be investigated. I'm sure that is not something that has been discussed, but if that's going to help you with the way you feel this building is going to look over Kinderkermack Road, then I suggest that you show up at the Mayor and Council meeting and give your opinion there and make your suggestions there, and possibly those suggestions will be discussed, and may be discussed in advance. Now that Mayor has heard your comment, if there's a discussion that the
Mayor has or a Council member has with JMF, maybe this can be discussed one more time based on comments made at the Land Use Board meeting.

MAYOR LAMATINA: Mr. Adams can make a motion to recommend a seven foot or more setback --

MR. ADAMS: Well, without seeing the drawings and some architectural design, I don't know how effective the five-foot would be to not be able to see the fourth story, which is the intent, versus the seven-foot. And I don't know how high it is above, because if it's three feet high, you won't see it. But if it's four feet high, you will see it. So without having those drawings in front of me, I really can't make that --

MS. BOGART: Mr. Chairman, I have a suggestion.

MR. SCHWINDER: Yes, Ms. Bogart.

MS. BOGART: I don't have the details of the floor plan, but maybe there's an opportunity, as the Mayor and you were suggesting, is that maybe 80 percent of the units are set back five feet, and the remainder is set back seven or eight feet, depending on the floor plan. So there may be some wiggle room that Mayor and Council could look at, depending on the floor plan.
MR. SCHWINDER: So I think this is an issue that the Mayor should take into account and have some further discussion, and what the planner has said, because we're going to make a vote tonight that the Mayor and Council can accept or throw out. And what I hope, as a result of this meeting, that the Mayor digests what has been said tonight and tries to act on it.

MAYOR LAMATINA: Thank you. I fully understand --

MS. BOGART: I think that --

MAYOR LAMATINA: I would urge a motion.

(Motion made and seconded.)

MR. SCHWINDER: Any other comments? Then I'd like to have a roll call vote on recommending this to the Mayor and Council as proposed by the planner, as -- as directed to us by the Mayor and Council in the last meeting. Roll call, please.

(Mr. Adams abstained; all others in favor.)

MR. SCHWINDER: That concludes our business end. The traffic study was part of that. That was all part of it.
Did you want to be heard, Mr. Doyle?

MR. DOYLE: No. I'll get you the revised language, and all that.

MR. SCHWINDER: Everybody should have received proposed dates for next year's meeting. They've been shifted around a little bit, so it's not always a first and a third Thursday. So please, there have been some mitigating circumstances, so please look it over. If you have any objection, please get back to us as quickly as possible. I'd like to have your answers back within the next week, and if I don't hear back from anybody -- it's been sent to everybody by e-mail. If I don't hear back, we're going to send it to Jane Dietsche at the Borough Hall, and Ms. Jane, she's going to memorialize that, pending conflicts.

Other than that, does anybody else have anything to say? If not, I'll entertain a motion to adjourn.

(Motion made and seconded; all in favor.)

MR. SCHWINDER: We are adjourned at 11:35. Thank you all.
CERTIFICATE

I, TRINA B. OTHA, a Notary Public and Certified Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

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Trina B. Otha, CCR
Notary Public
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